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**MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT REAUTHORIZATION**

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**SUBCOMMITTEE ON FISHERIES MANAGEMENT**

OF THE

**COMMITTEE ON**

**MERCHANT MARINE AND FISHERIES**

**HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**ON**

**H.R. 780**

**TO REAUTHORIZE THE MAGNUSON FISHERY  
CONSERVATION AND MANAGEMENT ACT**

**MARCH 3, 1993, APRIL 21, 1993, JUNE 16, 1993**

**Serial No. 103-28**

Printed for the use of the Committee on Merchant Marine and Fisheries



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# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION

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## HEARINGS BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

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# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION

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WEDNESDAY, MARCH 3, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:04 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Studds, Unsoeld, Taylor, Hamburg, Cantwell, Ravenel, Kingston, and Pallone.

Staff Present: Jeffrey Pike, Will Stelle, Sue Waldron, Jim Mathews, Greg Lambert, Lori Rosa, Mike Quigley, Robert Wharton, Mary Beth Beethum, Amy Young, Jean Flemma, Ashley Evans, Jim Hoff, Marina Chang, Stephen Peranich, Jed Brown, Harry Burroughs, Cyndi Wilkinson, Judy Alvarez, Rod Moore, Jill Brady, Julie Roberts, Ed Lee, Tiece Ziblut, and Bill Wright.

## STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK

Mr. MANTON. Good afternoon and welcome to the first hearing by the Subcommittee on Fisheries Management, a new Subcommittee created to ensure the proper management and conservation of a valuable national asset, the fisheries of the United States. Today, we formally begin our work with a hearing on H.R. 780, legislation to reauthorize the Magnuson Fishery Conservation and Management Act.

For thousands of years the human race viewed fish as an inexhaustible natural resource, there for the taking. We now appreciate that fish are a renewable but not inexhaustible resource. Indeed, humans, with our infinite capacity to abuse our planet, can deplete this wonderful gift and threaten whole ecosystems. The Magnuson Act established a Federal system to responsibly manage the harvesting of fish so as to ensure future availability.

Congress, in passing the Magnuson Act, recognized the need to manage fishing activities in order to protect fisheries and ensure their future viability. Accordingly, the Act provides a mechanism to apportion this resource among the many actual and potential users. I am greatly concerned that despite our best intentions, we may be failing in our efforts to responsibly manage and fairly allocate these resources.

Having said this, however, I must admit I am not yet convinced we need fundamental changes in the Act. Since my election as Chairman of this Subcommittee, I have had the opportunity to meet with commercial fishermen, anglers, council members, conservationists, consumers, and scientists all of whom share their concerns about the implementation of the Magnuson Act. I have been surprised at the number of parties who share the belief that the problems they have perceived or experienced are not necessarily associated with the Magnuson Act as written but rather the administration of the Act. While we will not shy away from necessary changes to the law, I am reminded of the old adage, "If it ain't broke, don't fix it."

Given the widespread belief that the problems confronting our fisheries can be traced to administrative shortcomings, it is appropriate we hear from those responsible for administering the Act at this first hearing. We on the Subcommittee fully appreciate the difficult tasks confronting the National Marine Fisheries Service and the councils. It is not easy to balance the need to protect fisheries against the legitimate demand of users. Perhaps even more difficult is the task of fairly allocating this resource among the various users.

In conclusion, I want to encourage all with ideas for improving the operation of this important program to make their views known to me and to the Subcommittee staff. We all need to work together. I hope that years from now all of us, commercial fishermen, anglers, Members of Congress, council members, and conservationists, can take pride in our role in shaping a program that fairly allocates this resource among present users and protects this bounty for future generations.

Unfortunately, our good friend and colleague, the ranking member, Don Young, is unable to be with us today. I would caution today's witnesses and those in attendance, however, that his absence is not the result of a lack of interest in the Magnuson Act Reauthorization. I can assure everyone here that Don intends to take an active role in this process and fisheries issues in general as he has in the past.

I understand he is at home battling the flu, and I know we all wish him well and a speedy recovery. He had intended to ask today's witnesses a series of questions, and I ask unanimous consent that these questions and his opening statement be made a part of the official record. I would also ask unanimous consent that any other member of the Subcommittee or the full Committee be allowed to submit any additional questions they may have for the record. I now recognize my colleague, Gerry Studds, the Chairman of the full Committee, the gentleman from Massachusetts.

#### **STATEMENT OF HON. GERRY STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS**

Mr. STUDDS. Thank you very much, Mr. Chairman. I want to commend you on this occasion of your first hearing as Chairman of the new Subcommittee. I hope that all will treat and understand the creation of this Subcommittee is, among other things, a renewed emphasis on the importance of fisheries. This is the first

time to my knowledge in the history of the Congress there has been a Subcommittee devoted exclusively to fisheries management. I am delighted that you are its Chair, and as you have now realized, you have inherited a very large plateful of problems.

I am even sorrier than you that the unspeakably distinguished gentleman from Alaska is not here because he is, I think, the only other member of this Committee who will admit to having been here when we enacted this statute in the first place, and Mr. Hughes, I guess, was here from New Jersey. If Mr. Young were here, we would engage in our usual rib-tickling exchange on these matters.

As you will recall—you won't recall, Mr. Chairman, you are not old enough, but when this bill was being debated and enacted in the mid-'70's, it was known at the time informally as the Studds-Magnuson Act. And shortly thereafter in a gesture of characteristic institutional modesty, the Senate formally changed its name by amending the statute. Since then, there have been so many problems in my part of the country that I am delighted to have it known as the Magnuson Act, although the gentleman from Alaska and myself have been threatening to entitle some major fisheries law sooner or later in a fashion that would name it after the two of us with his name coming first, something we have been threatening for a long time, and you never know, we may still do that.

Let me say that when we did approve this Act some 17 years ago, we were in serious trouble in many places in the country none more so than in New England as we were being overfished viciously by foreign factory vessels. We won the battle to enact this legislation. That is the good news. We have fulfilled the economic goal really of Americanizing our fisheries and adding billions of dollars literally to coastal communities throughout the country and most particularly in New England.

The bad news, as you very well know, is that the Act has not been nearly as successful in ensuring the sound management and conservation of these resources. As I said when we introduced legislation last month to reauthorize the Act, we all have a responsibility as stewards of these resources to balance the economic needs of our fishermen with the conservation needs of the resource. And if you can look at all into the future, the two are one and the same. It is not only a fundamental principle of the Act, but it is also, believe it or not, common sense. Without a healthy resource, by definition, we cannot have healthy industry.

If you will permit me one moment of parochial reflection, no one knows this better than the fishermen in my part of the world. In the past 10 years, we have seen the landings of our traditional groundfish stocks of cod, haddock, and flounder plummet. Fishermen on Cape Cod have resorted to catching underutilized stocks because haddock and cod are less than one-third the size that they ought to be in terms of their biomass. Small boat fishermen from Chatham and Nantucket have had to travel 150 miles offshore to the edges of Georges Bank for a single day's catch, and the condition of the flounder and cod resources in Massachusetts and Cape Cod Bay has forced fishermen from Plymouth and Marshfield and Scituate to give up fishing altogether. That is not what we had in mind.

It is not the vision of the industry or the resource we had almost two decades ago. For many reasons, the system has not worked very well so far for New England groundfish, and it is my hope that under your leadership, Mr. Chairman, we can establish why and do everything we can to make sure that this system does work.

We are going to hear today, I gather, from the Chairmen of Regional Fishery Management Councils throughout the country. They are probably all too familiar with the fact that the blame for many of our problems is frequently laid at their feet. I would agree with you, Mr. Chairman, that it is not clear to me at least wherein the blame lies, nor am I particularly interested in assigning blame. We have work to do. We face a challenge now at least in the New England fisheries as great as that we did two decades ago when we first introduced this law. Our stocks are seriously depleted at least as much so as they were two decades ago. The council system in New England to date has not managed to come up with a plan that will conserve those stocks. Whether the fault lies in a statute, whether it lies in that unusual critter known as the Fisheries Management Council, which we, in our infinite wisdom, invented a couple of decades ago, or whether it lies elsewhere is the challenge of this Subcommittee.

I am delighted that you have that challenge, and I wish you well. I wish I could stay with you. I have 25 simultaneous places I must be, but I wanted to be here to indicate the enormous personal importance that I attach, both as Chairman of this Committee and as a representative of a very special place on the earth, to this subject matter.

[Statement of Mr. Studds follows:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS,  
AND CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

This the first of several oversight hearings on the reauthorization of the Magnuson Fishery Conservation and Management Act. I want to commend Subcommittee Chairman Manton for his early and able leadership on this issue.

When our Committee approved the Act some 17 years ago, our fisheries were in trouble, overfishing by the fishing fleets of other nations. We won the battle to enact legislation that would provide for sound conservation and management of our fishery resources which in turn would provide for the survival of our own ailing fishing industry.

The good news is that the Act has fulfilled its economic goals through the Americanization of our fisheries, adding billions of dollars to the economies of coastal communities like New Bedford, Point Judith, and Gloucester. The bad news is the Act has not been nearly as successful in ensuring the sound management and conservation of our fisheries resources.

As I said when we introduced legislation last month to reauthorize the Magnuson Act, we all have a responsibility, as stewards of these resources, to balance the economic needs of our fishermen with the conservation needs of the resource. Not only is this a fundamental principal of the Act, but it is also common sense. Without a healthy resource we cannot have a healthy industry.

No one knows this better than the fishermen in southeastern Massachusetts. In the past ten years we have seen landings of cod, haddock, and flounder—known as groundfish—plummet. Fishermen in Provincetown have resorted to catching underutilized species because cod and haddock stocks are less than one-third the size they ought to be. Small boat fishermen from Chatham and Nantucket have had to travel to the edges of Georges Bank (some 150 miles offshore) to make a day's catch. The terrible condition of the flounder and cod resources in Massachusetts and Cape Cod Bay has forced fishermen from Plymouth, Marshfield, and Scituate to give up fishing altogether.



Mr. Chairman, this is not the vision of the industry or the resource we had almost two decades ago. For lots of reasons, the Council system has not worked for New England groundfish. Through these hearings we need to find out precisely why and do everything we can to make sure that the system is made to work. We must not repeat the groundfish experience in other parts of our country.

Today we will hear from the Chairman of our Regional Fishery Management Councils, those responsible for writing our fishery management plans. They are probably all too familiar with the fact that the blame for many of our management problems is being laid at their feet.

Mr. Chairman, it does no good to assign blame. What we need is to look at the entire system and fix it where it requires fixing. I am looking forward to working with an Administration that wants the council system to work, not fail; that supports research instead of cutting valuable fisheries research programs; and one that cares about the fishing communities around our coasts. I am confident that with the new Administration's help, and your leadership Mr. Chairman, we will be able to make real progress.

We must! The stakes are too high. Thank You.

[Statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, I am pleased that our new Subcommittee has chosen for its first hearing the reauthorization of a law that is of great importance to our nation's commercial fishermen.

The Fishery Conservation and Management Act, which was later named in honor of Senator Magnuson, has been a success story for the United States. Although we will hear criticism raised about the Act, I want to point out that the economic health of many of our coastal communities is directly tied to the conservation and management regulations that have resulted from the Act being implemented. For example, in 1976, the year that the Magnuson Act was signed into law, U.S. fishermen landed 5.3 billion pounds of fish. In 1991, that figure had risen to 9.4 billion pounds. Further, the value of the catch doubled during that 15-year period.

I know that we will be hearing requests for changes in the Act from many different interests. I think that the Act is working, and I hope that the Subcommittee will take the position that changes will not be made unless it can be shown that they will definitely help to make the Act work better.

Mr. Chairman, I look forward to working with you as we go through the reauthorization process this year.

[Statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that this Subcommittee is getting off to a good start in the reauthorization process for the Magnuson Fishery Conservation and Management Act.

H.R. 780 is a simple reauthorization bill, which provides funding to implement the Act through Fiscal Year 1997. However, numerous issues relating to the Act's implementation have been raised by the fishing industry, conservation groups, scientists, regional councils, recreational fishermen, and Federal officials. The series of hearings that the Subcommittee has planned will allow us to address those concerns, which include conservation, management, enforcement, and property rights.

As everyone in this room is aware, the Magnuson Act is the primary management tool for our marine fisheries. I will be interested to hear what the representatives from the eight Regional Fishery Management Councils believe to be important areas for consideration during this legislative process. I'd like to welcome Philip Horn from the Gulf of Mexico Fishery Management Council.

I hope that this Committee will be able to work with the new Administration to find a solution to the problems plaguing our nation's fisheries.

I look forward to the future hearings on this issue. Thank you, Mr. Chairman.

[Statement of Mr. Hughes follows:]

STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, I want to commend you for holding the first in a series of hearings on the Magnuson Fishery Management and Conservation Act. As a member of this Subcommittee and a representative of South Jersey, I have a strong interest in fisheries issues.

Commercial and recreational fishing provide an important economic resource for our coastal communities. The Atlantic Ocean has provided livelihoods for New Jersey residents and other coastal communities for hundreds of years. However, in recent years, it has been necessary to place severe restrictions on catches and fishing moratoria on many species due to declining fish stock. Consequently, the socioeconomic aspects derived from these species are being severely eroded.

The state of the groundfish fishery off the New England coast provides a poignant example of the problems we face in our fishery management today: serious overfishing, lack of enforcement, and the need for tough conservation measures.

Equally as important to effective fisheries management is the need to include research on stock identification, the biology and movements of species, and other data in management plans. Indeed, effective management plans depend on sound scientific information and analysis. This information, in turn, will indicate to us whether the conservation measures implemented are having the intended effects.

Additionally, I would like to ensure that there is plenty of opportunity for public input in the process of developing appropriate management plans for our fisheries resources. It is essential to sound management to consider the concerns of all those involved in the fishery.

Moreover, fishery management plans must be implemented while a fishery is still able to respond to the plan, not after it has declined to the point of no return. The economic and social impacts on the fishing community of extremely restrictive conservation measures must also be considered as the effects may well be devastating and in many instances irreversible.

I am also very interested in ensuring that our council system functions in the manner intended by the Magnuson Act: that all interests are represented in a fair and balanced manner.

Finally, we need to move towards improving the oversight of our fisheries and enforcement of regulations that will ensure the conservation of these vital resources. Indeed, sound stocks are essential to the economic base of many of our coastal fishing communities.

Our goal should be to conserve our commercial and recreational fisheries in sufficient quantities to provide for the economic benefit of a viable commercial harvest and social advantages associated with a recreational fishery. I am hopeful that this series of hearings on the Magnuson Act will help us to achieve this goal.

Mr. Chairman, thank you again for holding this hearing. I would like to welcome today's witnesses, and I look forward to their testimony.

Mr. MANTON. I thank my Chairman and thank him for your error in saying I was too young to be around for the Magnuson Act. Biologically, that is not true, but institutionally, you are probably right.

Mr. STUDDS. Spiritually, it is true.

Mr. MANTON. The Chair recognizes the gentleman from South Carolina, Mr. Ravenel.

STATEMENT OF HON. ARTHUR RAVENEL, A U.S.  
REPRESENTATIVE FROM SOUTH CAROLINA

Mr. RAVENEL. Mr. Chairman, in the absence of our ranking member, I am going to read the short statement of Mr. Young who, of course, is my nonmentor and whose statement I do not necessarily agree in toto with.

"Mr. Chairman, I am pleased that our new Subcommittee has chosen for its first hearing the reauthorization of a law that is of great importance to our nation's commercial fishermen. The Fishery Conservation and Management Act, which was later named in honor of Senator Magnuson, has been a success story for the United States. Although we will hear criticism raised about the

Act, I want to point out that the economic health of many of our coastal communities is directly tied to the conservation and management regulations that have resulted from the Act being implemented. For example, in 1976, the year that the Magnuson Act was signed into law, U.S. fishermen landed 5.3 billion pounds of fish. In 1991, that figure had risen to 9.4 billion pounds. Further, the value of the catch doubled during that 15-year period.

"I know that we will be hearing your request for changes in the Act from many different interests. I think that the Act is working, and I hope that the Subcommittee will take the position that changes will not be made unless it can be shown that they will definitely help to make the Act work better. Mr. Chairman, I look forward to working with you as we go through the reauthorization process this year." Thank you.

Mr. MANTON. The Chair recognizes the gentlelady from Washington, Mrs. Unsoeld.

#### STATEMENT OF HON. JOLENE UNSOELD, A U.S. REPRESENTATIVE FROM WASHINGTON

Mrs. UNSOELD. Thank you, Mr. Chairman, and I appreciate your statement and the statement that was read into the record for the ranking member. And I also want to associate myself with the remarks from the gentleman from Massachusetts because I have seen how the current system does not work as its authors had intended. And I have seen enough to make me at least call for reform. I have seen a management system that is rooted in conflicts of interest. I have seen overexploited and overcapitalized fisheries jeopardized by management plans promoting further exploitation and capitalization. Perhaps worst of all, I have seen the decisionmaking process deteriorate to the point where the Department of Justice and Office of the Inspector General involve themselves in fishery management decisions.

Mr. Chairman, I expect we are going to have an opportunity to explore these issues fully during our reauthorization process, and I also expect that our witnesses today from the Councils are probably going to resist some of the reforms that I believe are necessary. Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes the gentleman from California, Mr. Hamburg.

#### STATEMENT OF HON. DAN HAMBURG, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HAMBURG. Thank you and good afternoon, Mr. Chairman and colleagues. Three hundred miles of Pacific coastline define the western edge of my district, the First District of California, and fisheries are certainly one of my key concerns. I am committed to the careful evaluation of the decisionmaking process and the regulatory framework as we authorize the Magnuson Act. In these deliberations, we must always be sensitive to the needs of the fishing industry and at the same time promote long-term sustainability of our precious resources through responsible stewardship.

The salmon industry on California's north coast has been virtually shut down. The combination of stock depletion and regulations

have gutted fishing incomes throughout my district. The average salary last year of our local fishermen was just under \$4,000. Thousands of fishing and support industry jobs have been lost on the Pacific Coast adding to the economic woes of a region that was once known best for the abundance of its resources.

Everyone agrees that regulation is necessary. Everyone knows that not only are there far fewer fish in the sea, but that competition for this valued resource is growing. Everyone recognizes that the health of anadromous fisheries is directly related to the degradation of our watersheds and the destruction of riverine habitat. Forest mismanagement, toxic runoff, and water diversions are destroying the fish spawning grounds of my district.

During this reauthorization process, we must ensure coordinated management of the entire fish habitat. We must examine whether the current administrative regime adequately addresses the needs of fish which live in two distinct environments. There appears to be an overlap between the habitat needs of anadromous and freshwater fish which is not reflected in the current jurisdictional boundary between the National Marine Fisheries Service and the councils on the one hand and the Fish and Wildlife Service on the other. Are current jurisdictions of these entities appropriate for the effective management and regulation of anadromous fish?

A second issue critical to the Act's effectiveness is the structure of the councils themselves; their composition, the appointment process, possible conflicts of interest, and the time involved with formulating fishery management plans must be carefully scrutinized in this reauthorization process. Regulation must and should work to create evenly apportioned benefits to the economy and the ecology.

I look forward to working closely with all concerned groups to ensure that the Magnuson Act will be an effective tool to conserve and manage our living marine resources. Thank you, Mr. Chairman.

Mr. MANTON. Before going to the next member, I would like to invite those standing in the back to come forward if they wish and fill up some of these seats. We have got more than enough room up on the top dais here so please don't be bashful. The Chair would recognize the gentlelady from the State of Washington.

#### STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON

Ms. CANTWELL. Thank you, Mr. Chairman. I appreciate your comments as well as the full Committee Chairman's comments on this issue and would like to agree with my colleague from Washington State, Congresswoman Unsoeld, and Mr. Hamburg in some of their specific observations and probably in their tone as well.

I want to take this opportunity to say that because of Warren Magnuson's vision on this issue, we established what I think was a very responsible approach to fishery resources in the United States. It gave us a tool to protect our vital natural resources. At the same time, this management plan stimulated growth of the fishing industry, which has had a great economic impact on my district.

I think it is important that now we take the opportunity because of that economic impact, not just in my district but throughout the United States, to look at the foundation on which the Act was established. We must examine the Act and make sure that we look at possible improvements and provide for what I would call a more responsible stewardship of this resource so that we can have continued prosperity in the national fishing industry. I am confident that we can come up with those ways by making sure that responsibility and consistency are part of the Act. Thank you.

The prepared statement of Ms. Cantwell follows:

**STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON**

Mr. Chairman, I would like to take this opportunity to congratulate you on expediting the Subcommittee's consideration of the Magnuson Act. I look forward to working with you and the other Subcommittee Members in the months ahead.

When the Magnuson Act was first enacted in 1976, there was a strong sense that what Senator Warren Magnuson from my home State of Washington had done was nothing short of visionary. By establishing our exclusive control of fishery resources off the shores of the United States, Senator Magnuson gave us the tools to protect and conserve our valuable natural resources. At the same time, his management plan stimulated the growth of a national fishing industry which has become one of the economic mainstays of not only the United States but also my district.

The continued economic success of the fishing industry in Washington State is critical to the growth and vitality of the First District. During the years of 1989-1991, an average of 19.3 million pounds of fish were brought into the port of Seattle alone and with it an average of \$14.4 million. The industry supplies thousands with jobs and a way of life that is unique to the Northwest.

Mr. Chairman, it is my hope that Senator Magnuson's vision will continue to provide us with a strong foundation for the reauthorization of this Act. With a shared commitment to a strong national fishing industry and thoughtful stewardship of the resources upon which it depends, I am confident that we will guide fisheries management in a responsible and consistent manner.

Mr. MANTON. I think that concludes the opening statements of the members, and we will go right to the first panel. That panel contains Diana Josephson, Deputy Under Secretary for Oceans and Atmosphere, United States Department of Commerce, National Oceanic and Atmospheric Administration, and I believe—is Mr. Truesdale going to join you?

Ms. JOSEPHSON. No.

Mr. MANTON. No. OK.

**STATEMENT OF DIANA H. JOSEPHSON, DEPUTY UNDER SECRETARY FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Ms. JOSEPHSON. Mr. Chairman and members of the Subcommittee, my name is Diana Josephson. I am the Deputy Under Secretary for Oceans and Atmosphere, U.S. Department of Commerce. I appreciate the opportunity to testify about the Magnuson Fishery Conservation and Management Act. Since the President has not submitted his 1994 budget, I am not at this time able to comment on the authorization levels in H.R. 780.

In the 16 years since the Act brought under United States jurisdiction the vast fishery resources of the 200 mile exclusive economic zone, Congress's vision of a regionally based Federal fishery management system has been brought to fruition. The eight Regional Fishery Management Councils, in cooperation with NOAA

and the State fishery agencies, have prepared 33 fishery management plans (FMPs) that have been approved by the Secretary of Commerce. Seven other FMP's are currently under development. Most of the nation's most important commercial and recreational marine fisheries that predominantly occur in the U.S. economic zone are now or soon will be under Federal management.

One of the initial objectives of the Act was to impose strict conservation measures on the activities of the vast foreign fishing fleets that had decimated our fishery resources. A second priority was to provide the domestic fishing industry with first preference to the resources within the U.S. economic zone. I am very pleased to report that these two initial objectives have been fully realized. During 1992, there were no foreign fishing operations within the exclusive economic zone. Compared to 1976, the U.S. domestic harvest has nearly doubled.

Despite these achievements, the nation's fisheries are at a crossroads. A 1992 study by the National Marine Fisheries Service concluded that of the fish stocks that can be assessed, 61 stocks are fully utilized, 67 stocks are overutilized, and 28 stocks are underutilized. The status of 80 stocks remains unknown. That study suggests that we can do better.

NMFS economists estimate that the seafood industry has the potential to produce nearly \$3 billion in additional growth to the U.S. economy. The recreational fishing industry also has significant potential for added economic growth. These opportunities represent literally hundreds of thousands of potential new jobs and a significant contribution to restoring the nation's economy. That is the challenge before us.

The Department has already begun to consider changes to the Act. We are reviewing the many suggestions that have been put forward by industry, the general public, the Councils and from within the Executive Branch. NOAA has been following an open, participatory process to develop a proposal. We have twice met publicly with our Marine Fisheries Advisory Committee, published letters requesting comments, and met with the chairmen and executive directors of the Fishery Management Councils. This process, however, is not yet complete. Not all of the Councils have met to consider the issues and provide us with their views.

Mr. Chairman, President Clinton announced his intention to nominate Dr. James Baker and Mr. Douglas Hall to be the next Under Secretary and Assistant Secretary for Oceans and Atmosphere. As the new NOAA leadership comes aboard, we will be taking a hard look at each of the many suggestions for amendments. As was the case with the original enactment, NOAA would like to work with the staff of the Subcommittee on Fisheries Management and the full Committee to identify the most pressing issues that should be addressed by legislation.

Once this process has been completed and the Administration has formulated its views, we would like to return and testify on the need for any substantive changes to the Act. Mr. Chairman, this concludes my testimony. Thank you very much for the opportunity to appear before you today. I have received your written questions, and we request permission to respond to them for the record.

[The prepared statement of Ms. Josephson can be found at the end of the hearings.]

Mr. MANTON. How much time do you think you would need to make the appropriate responses? I know that you are what?—the first upper-level appointee to NOAA?

Ms. JOSEPHSON. The first and only.

Mr. MANTON. As the first political appointment and being somewhat new to the process, we certainly would be happy to afford you the time. If you could tell us generally how much time you would need?

Ms. JOSEPHSON. I think probably by the end of the month if that would be acceptable to you.

Mr. MANTON. Yes. That would be fine.

Ms. JOSEPHSON. Yes.

Mr. MANTON. Should we not then go forward with any other questions? That is what you would prefer?

Ms. JOSEPHSON. Yes. I would prefer that. I mean, this is my 10th day, I think, aboard.

Mr. MANTON. OK. I think in fairness to the witness, we have submitted some detailed questions, and if any of the other members have questions they would also like to submit, we would expect to have written answers by the end of the month. Is that agreeable?

Ms. JOSEPHSON. Yes.

Mr. MANTON. Just complementary to what we were saying, when will the new administrator for fisheries be appointed?

Ms. JOSEPHSON. Various names are under consideration right now. No decision has been made. When the Department makes its choice, I would think it would, again, probably be toward the end of the month, beginning of April, in the next three or four weeks. I can't be more specific than that.

Mr. MANTON. OK. If there are no strong objections from the other members of the panel, I would go along with the request for time, and we will move on with panel II.

Ms. JOSEPHSON. Thank you very much.

Mr. MANTON. Oh, I am sorry. Mr. Ravenel, you are recognized.

Mr. RAVENEL. Thank you, Mr. Chairman. Ma'am, it has been mentioned that there is going to be a \$30 million reduction in the, you know, moneys for NOAA. When will we know, you know, what the details of this reduction are going to be?

Ms. JOSEPHSON. The President's economic stimulus package is part of that. \$65 million in cuts for NOAA have been proposed. I believe those will be coming up to the Congress within the next week or two. I don't know the precise date. There is also reprogramming with the Department which should be coming up to the Hill within the next week or two. We are also in the middle of the fiscal year '94 budget passback so I think all these activities are being woven together, and I think by the end of the month we should have decisions.

Mr. RAVENEL. Overall though, that \$30 million reduction is about accurate?

Ms. JOSEPHSON. The reduction is \$65 million, not \$30 million.

Mr. RAVENEL. Sixty-five?

Ms. JOSEPHSON. Yes, for all of NOAA.

Mr. RAVENEL. Thank you.



Mr. MANTON. Thank you, Ms. Josephson. I am going to ask the next panel to bear with us, but we have a vote on, and I think we would all be better served if we broke for about 15 minutes and go and vote and come back. So we are going to recess for 15 minutes. Then I would ask panel II, the chairpersons of the various Fisheries Management Councils to come forward. We will be back here at quarter to the hour.

[Recess.]

Mr. MANTON. If the Committee will come to order, we will continue with our hearing. We actually ended up with two votes. I apologize for coming back a little later than expected. Panel II seems to be assembled, and if I am correct, from left to right we have Joseph Brancalone, Chairman of the New England Fishery Management Council; moving to the right, Lee G. Anderson, Chairman, Mid-Atlantic Fishery Management Council; Curtis W. Bostick, Chairman, South Atlantic Fishery Management Council; Hector M. Vega-Morera, Chairman, Caribbean Fishery Management Council; Philip D. Horn, Chairman, Gulf of Mexico Fishery Management Council; Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council; Rufo J. Lujan, Chairman, Western Pacific Fishery Management Council. Did we get everybody?

If so, we will proceed starting with Mr. Brancalone and I would ask that you be as brief as possible in your oral testimony. I know you probably have prepared statements, and these will be included in their entirety in the official record. Why don't we start?

**STATEMENT OF JOSEPH M. BRANCALEONE, CHAIRMAN, NEW ENGLAND FISHERY MANAGEMENT COUNCIL; ACCOMPANIED BY ARTHUR J. ODLIN, VICE CHAIRMAN**

Mr. BRANCALEONE. Thank you, Mr. Chairman and members of the Subcommittee. I am Joseph Brancalone, Chairman of the New England Fishery Management Council. Our council, at its regular meeting last week, discussed the question of possible amendments to the Magnuson Act during the upcoming reauthorization process. It was the consensus of our members that the council system of management under Magnuson is fundamentally sound, and there is no need for major restructuring of the council system or sweeping changes in the Act. There are persistent problems relating to procedures and operations, however, and we invite your careful consideration of ways to alleviate or remove some of those problems.

We believe that the major impediment to the effective functioning of the councils is the complex and extensive rulemaking process. Even the simplest kinds of measures or changes to the fishery management plan require exhaustive analysis, public discussion, and review before they can be implemented. Our council has, from the beginning, operated in a totally open manner with extensive inputs from industry and the interested public and will continue to do so. There are times, however, when even with industry concurrence and support, we are unable to take prompt action to protect spawning aggregations of fish or otherwise advance the goals we are striving for. We believe that the process might be speeded up



by decentralizing review and approval and giving a large measure of those responsibilities to the regional director.

There continues to be an inadequate level of funding for effective operation of the councils. If the system was less complex and the analytical requirements less stringent, the funding problem might also be diminished. We also think that if major restrictions have to be imposed on the harvesting sector in order to meet stock rebuilding schedules mandated by fishery management plan guidelines and the condition of various stocks, then some level of assistance to the industry is essential.

The council has not generally favored subsidies or government assistance programs, and much of the industry has also been uninterested in such programs. Now, however, it is clear that without some assistance a significant part of the fishing community may, and I stress the word may, not be able to financially survive the type and level of restrictions currently being considered by the council, both for scallops and groundfish.

Finally, we would like to see less rigid application of the 602 guidelines by the National Marine Fisheries Service. We do not object to the guidelines per se, but we believe the National Marine Fisheries Service has clearly exceeded the intent of Congress which, in an earlier amendment to the Act, inserted into Section 301[b] the parenthetical language "which shall not have the force and effect of law."

By placing the guidelines in the Code of Federal Regulations and by its own policy decision, the National Marine Fisheries Service has changed the guidelines from a tool to assist in the development of fisheries management plans to a rigid, obligatory set of requirements which, if not followed in minute detail, guarantee disapproval of a plan or amendment. Even the National Marine Fisheries Service in its effort to manage Atlantic Highly Migratory Species has recognized that compliance with the guidelines requires a great amount of effort and at times borders on the impossible. But the strict application of the guidelines continues.

We have seen numerous proposals put forth by the National Marine Fisheries Service and by other groups for possible amendments to the Act. We are not prepared to support or oppose those proposals, but we will continue our deliberations and our discussions. We intend, at a subsequent hearing by the Subcommittee, to take positions on at least some of the suggested amendments. For the time being, we urge caution in the amendment process. The system is less than perfect, but it does not need a major overhaul or extensive revision. I would be happy to answer any questions, Mr. Chairman. Thank you.

[The prepared statement of Mr. Brancaleone can be found at the end of the hearings.]

Mr. MANTON. We will take questions from the—I did not have my mike on. We will go through the panel and then we will take questions from the members. Our next panelist will be Mr. Lee G. Anderson.

**STATEMENT OF LEE G. ANDERSON, CHAIRMAN, MID-ATLANTIC  
FISHERY MANAGEMENT COUNCIL<sup>1</sup>**

Mr. ANDERSON. Mr. Chairman and members of the Subcommittee, my name is Lee Anderson. I am Chairman of the Mid-Atlantic Fishery Management Council. I would like to thank you for inviting me here today. Before I begin my testimony, I would like to make it clear that except for one issue, I am speaking for myself and not on behalf of the council. Because of your hearing schedule and our council's meeting schedule, I was not able to present my remarks to the council for their consideration and approval.

We would appreciate your keeping the record of this hearing open so the entire council can consider these issues and prepare a position. We also understand that this is a preliminary hearing, and others will be held later. We would welcome the opportunity to return and present the formal position of the council's on various issues as they develop.

For the most part, I will focus my comments on specific sections of the Act. With respect to Sections 102 and 206, I believe that large scale, and I stress the term large scale, driftnet fishing should be banned in the EEZ off the East Coast to reduce mortality of the currently overfished stocks such as sharks and swordfish.

With respect to Section 302[a][2], changes in the council, one item that the Mid Atlantic Council has approved is supporting the addition of North Carolina to the Mid-Atlantic Council. In May of 1991, the council voted to support splitting North Carolina at Cape Hatteras for council membership purposes with the area north of Cape Hatteras being part of the Mid-Atlantic Council and the area south of Cape Hatteras remaining with the South Atlantic Council.

Many of the fish populations split at Cape Hatteras. The fisheries for Atlantic mackerel, Loligo squid, butterflyfish, surf clams, quahogs, and scup all stop at Hatteras. Summer flounder ranges slightly to the south but not south of the North Carolina-South Carolina border. We believe that the fishermen of North Carolina are entitled to a voting voice on both the Mid-Atlantic and the South Atlantic Council.

With respect to Sections 303[a][5] and 304[b], I note that the Magnuson Act requires that each fishery management plan specify the collection of certain data elements and allows councils to specify additional data elements. Since part of these data are not available from current NMFS data system, we have attempted to supplement the National Marine Fisheries Service data with vessel logbooks.

The Surf Clam and Ocean Quahog FMP has had vessel and processor reporting since 1977 with a high degree of comparability between the two data sources. From the beginning, the logbook data were used to track catch against quota so effort limitations could be modified to reduce chances of closure of the fishery. The logbook records made a significant contribution to the formula used to initially allocate the individual transferable quotas. They are also

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<sup>1</sup> My comments before the Subcommittee concerning driftnet fishing were unclear because I used in a general way a term that is more specifically defined in the Act. According to the Act, large scale driftnet fishing only includes nets of one and a half mile or more. My comments should be interpreted with respect to nets less than this length.

used to calculate extraction rates for stock assessment and quota setting purposes.

In spite of the great success of the surf clam and ocean quahog logbook program, NMFS, due to mainly budget constraints, has been reluctant to approve similar provisions in other fishery management plans. For example, we included vessel and dealer logbooks in Amendment 2 to the summer flounder fishery management plan. The summer flounder resource has been overfished, and Amendment 2 imposed a series of stringent measures including a quota on the commercial fishery to provide an opportunity for the resource to recover. To facilitate tracking catch relative to quota, Amendment 2 included vessel and dealer logbook reports.

When NMFS approved Amendment 2, they approved both reporting requirements. However, approximately six months later, NMFS withdrew the approval of the vessel logbook requirement. They indicated that they were preparing a comprehensive logbook program for a number of fisheries in Mid-Atlantic and New England, and they would prepare a regulatory amendment to the summer flounder plan in the summer of '93 to take effect in January of '94, one year after the plan went into effect.

While a comprehensive reporting program has much merit and is a program that I believe most of the council, if not all of the council, would support, a summer flounder vessel logbook program should have been implemented 1 January, '93, as scheduled so that we could have data to audit the NMFS weighout tapes and dealer reports during the first years of the quota program of this very critical plan. Summer flounder could have been merged in with the comprehensive plan when it is implemented.

Lack of funds should never be a reason for not approving essential logbooks. Permit fees should be allowed to be set at levels to cover these costs. The National Marine Fisheries Service must be given appropriate financial resources to support data collection mandates of the Act and requirements of the plan. Modern computer and facsimile transmission technology should be used to keep these costs at a minimum. Reporting by dealers and fishermen should not be seen as an imposition but as part of the routine cost of using a public resource as it is with migratory waterfowl, deer hunters, et cetera.

With respect to Section 303[b], I believe that it should be possible to have the appropriate tools available so councils can assure that fishermen who struggle through rebuilding phases of an overfished fishery can earn the benefits of the struggle. This is the most difficult task of fisheries management in the decade of the 1990's.

The Congress must provide tools to the councils that can be applied as appropriate to each fishery management plan. Blanket solutions are not appropriate because of the practices and economics of the fisheries differ. A solution that may have worked in the surf clam and ocean quahog fisheries and may have been adaptable to the wreck fish fishery may not work in other fisheries. Allocations to fishermen may appropriately be auctioned in one fishery, be assigned for a fee based on historical participation in another, and given away as in the case of surf clams. The solution for a given fishery cannot be known until the fishery management planning

process has run its course. The challenge for Congress is to take steps necessary so that no council must say "we cannot do that."

In our council's original Surf Clam and Ocean Quahog Fishery Management Plan, we implemented a moratorium on entry of additional vessels into the surf clam fishery and stated that the moratorium would last one year while we developed an ITQ program. At that time, I was a member of the council's Scientific and Statistical Committee and chaired a Subcommittee of that group created to design an ITQ system. We designed a system that was finally implemented in 1990, 10 years later. The delay was caused by arguments within the council and within industry over how to make the initial allocation and within the council over whether it is proper to give away a public resource since we could charge no more than the administrative costs of issuing the permit.

When the effort limitations of the plan allowed boats to fish no more than 36 hours in a calendar corridor, this micro management of vessels resulted in pressure to change the plan and a willingness of industry to consider the ITQ system. The free public resource issue took a back seat to the necessity of change. However, it is still a significant issue in the minds of many council members, and this could be a roadblock to timely development of appropriate regulations in other fisheries. It must be possible for the public to recover some of the costs associated with the allocation and entry limitations programs. Fishermen who are not permitted to enter the fishery should at least see a return to the public coffers by those privileged to participate.

Also, consideration should be given to the possibility of various financial programs to support stock recovery. Vessel buy-back programs funded from fees associated with allocations or from landing fees is one method that has been proposed. The Congress should investigate these and other programs financed by user fees which could help the industry bear costs of recovery, and I stress the term other programs. I mentioned buy-backs because it is one that has been thrown around. I don't think it is appropriate in all cases, and indeed buy-back programs have some definite weaknesses.

Mr. MANTON. Mr. Anderson, we have allotted five minutes to each witness. I am not being totally strict on the time, but everybody's full statement will be inserted in the record, and I just wonder if it would be possible for you to summarize the rest of your testimony.

Mr. ANDERSON. Yes, sir.

Mr. MANTON. We would appreciate that.

Mr. ANDERSON. Since it is in the record, I will skip through things. One thing on fees, I believe that the constraint on fees must be revised both as a revenue producing tool and a fisheries management tool. And also just skipping to the end, our council feels that a very important issue in solving fishery management problems is interjurisdictional considerations. We have developed a bluefish plan. We have developed a summer flounder plan with cooperation of Atlantic States Marine Fisheries Commission and the States. These programs have been accepted, but there is real difficulty in implementing these programs because States are not implementing the programs in their waters. This is affecting the integrity of the plan.

I believe the answer lies in giving States an incentive to carry out management plans that they have agreed to do among themselves and in cooperation with councils. I am aware that the Atlantic States Marine Fisheries Commission and others are working with the Committee on some ideas. Without endorsing anything in particular, let me re-emphasize the tremendous importance of solving this interjurisdictional problem this year. Something must be done to put real teeth in the implementation of interjurisdictional management plans. This will likely involve some sort of carrot-and-stick approach. With that, I will stop, and I apologize for going over, and I will answer any questions you have.

[The prepared statement of Mr. Anderson can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Anderson. I am just going to turn the Chair over briefly to Mrs. Unsoeld, and we will move when she takes the Chair to the next witness, and I will be back in a couple of minutes. Thank you.

#### **STATEMENT OF CURTIS W. BOSTICK, CHAIRMAN, SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

Mr. BOSTICK. Good afternoon. My name is Curtis Bostick, and I am appearing today on behalf of the South Atlantic Fishery Management Council of which I am the Chairman. I have previously provided the Committee with my written testimony which I would like to submit for the record. Although many of the thoughts in my testimony are held by the majority of our council members, some of them are based on my six-years' experience on the council.

The South Atlantic Council is composed of members from the States of North Carolina, South Carolina, Georgia, and Florida and has jurisdiction over the resources of the nation's marine fisheries in the EEZ from the northern border of North Carolina to the Gulf of Mexico. The council routinely manages a number of fishery resources in conjunction with other East Coast and Gulf of Mexico councils. The council believes strongly that it is a vital and integral part of the fishery management system, and it is government's best interface with the users of the resource.

My testimony focuses on the need for a new management ethic, one that promotes conservation by strengthening the management of the nation's fisheries by removing many of the uncertainties in today's system. You have before you the opportunity to amend the Magnuson Act to provide a framework for a decision process that will enhance the long-term viability of the economic interest that rely on the resource. The Act as presently constructed is not flexible enough to address today's fishery problems and as implemented by the National Marine Fishery Service does not provide the independence to fishery management councils to enhance the public's confidence in the management system.

I believe the reauthorization of the Magnuson Act should focus on conservation of our marine resources. In that regard, I put forward a number of suggestions which are in my written testimony. I hope the testimony combined with the discussions we have here today will set forth some ideas that the Committee can discuss and use to shape this important statute.

Our written testimony is based on the conclusions that the council system is the best system to manage marine fisheries. It is not without its detractors, but every alternate management system at the Federal level has failed. Council process creates a place where the interests can come together and collectively develop solutions to conserve the fishery while at the same time allowing for economic use of the resource. The system pulls together the concerns of conservationists, environmentalists, recreational and commercial fishermen. It includes the views of the affected State managers and the Federal Government. It does all of this in an open and above-board planning process.

Why do people complain about the council system? They complain because they do not have any confidence in the institutions that regulate their activities. They believe the councils are political bodies with interest other than their own. I believe we have a chance to restore confidence in this system. Let us make it unequivocally clear that the overall objective of this Act is conservation. Let us define the roles of each of the institutions so clearly that everyone understands the policy and the regulatory limits of each of the institutions. Let us improve the checks and balances of each of the institutions. Let us make the process more transparent and predictable so there will be a greater certainty to the outcome.

And, finally, let us resist the temptation to manage fisheries directly by statute. Let us return the management of the highly migratory species on the East Coast to one council. On the West Coast this has been done, and it has been successful. For the councils, I think we need to strengthen them. They are far too dependent on the NMFS. NMFS provides them with their scientific, their legal, and their policy advice, and NMFS becomes the arbiter of whether to accept the council's interpretation of that advice. We need to give the councils their own lawyers, their own scientists, their own administrative support.

This Committee should look at ways to make the councils more independent of NMFS and allow them a greater role in the development of the marine policy. We need to improve the management process to ensure that when the councils propose management measures, NMFS puts them in place in a timely fashion.

Lastly, the Committee needs to address the issue of the interaction of State and Federal management interjurisdictional fisheries to ensure when a council adopts a plan the States will have the requisite authority and the funding to put it in place. Management of our marine fisheries is far more complicated than it was 16 years ago. There are more unhealthy fisheries than there are healthy ones, and more people are demanding access to them. This is the time to strengthen this statute to allow for the effective conservation of our resource for the benefit of all of our nation's citizens. Thank you, Madam.

[The prepared statement of Mr. Bostick can be found at the end of the hearing.]

Mrs. UNSOELD. [presiding] This time I will get it right. Mr. Vega-Morera.

**STATEMENT OF HECTOR M. VEGA-MORERA, CHAIRMAN, CARIBBEAN FISHERY MANAGEMENT COUNCIL; ACCOMPANIED BY MIGUEL A. ROLON, EXECUTIVE DIRECTOR**

**STATEMENT OF HECTOR VEGA-MORERA**

Mr. VEGA-MORERA. Thank you. Madam Chairman, members of the Subcommittee, my name is Hector Vega. I am a commercial fisherman by profession. I am Chairman of the Caribbean Fishery Management Council. First of all, we would like to express that it is our opinion that the Magnuson Fishery Conservation and Management Act is fulfilling its mandate, and there is no reason to change the fundamental parameters of the law. We understand, however, that there are some issues that will be discussed during this process and would like to take this opportunity to offer our opinion on two of these issues.

The first is habitat. It is of utmost importance to strengthen the Magnuson Fishery Conservation and Management Act in all habitat concerns. Habitat is the most important component of a fishery. We endorse any changes to the law that will identify and protect the habitat needed to maintain optimum yield.

The second is large pelagics. We endorse giving the responsibility of preparing management plans for highly migratory species back to the councils. The councils have the necessary mechanisms to ensure the participation of all concerned with these fisheries. Perhaps what is needed is a better method for all council constituents to vote in the process of managing highly migratory species.

In addition, we would like to bring to your attention our particular situation in the Caribbean. Since the creation of the council system in the 1970's, neighboring nations in the Caribbean have looked for our cooperation in developing a successful management strategy for fishery resources that are common to the U.S. Caribbean and the rest of the Caribbean. Therefore, our council has been very active in the promotion of pan-Caribbean management. As a matter-of-fact, two of our FMP's have as one of the objectives the "promotion of pan-Caribbean management." We believe that we are being successful in addressing this objective since many of the Caribbean nations are in the process of adopting the council's system including the preparation of management plans in the management of their respective fisheries.

Finally, the council has not been able to meet to discuss in detail all the issues involved in this reauthorization process. Therefore, we respectfully request the opportunity to submit additional comments, if necessary, after our next council meeting. Thank you very much for the opportunity to be here.

[The memo of Mr. Vega-Morera can be found at the end of the hearings.]

Mrs. UNSOELD. Thank you. Mr. Horn.

**STATEMENT OF PHILIP D. HORN, CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

Mr. HORN. Thank you, Madam Chairman. And, Madam Chairman and members of the Committee, I am Philip Horn, Chairman of the Gulf of Mexico Fishery Management Council. I appreciate



this opportunity to appear before you and provide recommendations for your consideration in reauthorizing the Magnuson Act. The Act has been of vital importance to management of the fishery resources in our region. Currently, 10 fishery management plans implemented under the Act regulate most of the species that are predominantly in the Federal waters of the Gulf of Mexico. These fisheries vary from shrimp, which produces 200 to 300 million pounds of landings annually, valued at about \$1.4 billion to the national economy, to coral reefs which are a valuable nonconsumptive resource. Therefore, reauthorization of the Act is critically important to our region, its economy, and the social structure of its communities.

Over the years, fishing effort and utilization have increased dramatically, and there are few stocks that could be classified as underutilized. Our fisheries generally all have both recreational and commercial participants, and many are estuarine dependent which involves cooperative management with the States.

Under the Act, the National Marine Fishery Service is charged with providing the information to the council for proper management of these stocks. We are concerned over the inadequate funding that has been allocated to NMFS under the Act for data collection, research and analysis, enforcement, and management support. The seriousness of this problem is illustrated in NOAA's annual report to Congress entitled "Our Living Oceans" which assesses current knowledge on the status of the stocks. For a large number of stocks, of very great importance to our fishermen and economy, the status of the stocks is classified as unknown. In our reef fish complex which includes 39 species, principally snappers and groupers, we have definitive stock assessments for only three stocks.

The past two Administrations submitted to Congress an annual budget for NMFS that was generally reduced by about 20 to 40 percent over the previous year. Fortunately, Congress restored some of the funding each year. However, funding for the collection of basic management information and technical analysis necessary for proper management of fishery resources in our region has been and is inadequate. NMFS even lacks an adequate number of scientists with expertise in population dynamics, to provide us more than three stock assessments annually, much less the capability to collect the proper fisheries information needed for these assessments. I recognize that the budget deficit must be addressed by Congress, but adequate funding for management for our fishery resources will contribute significantly to the economy of the Nation and help alleviate this problem. It is a prudent investment in the future.

We have long recognized the importance of maintaining and improving marine environments for our fishery stocks and have been actively involved in habitat protection since 1979. Our region has 46 percent of the nation's coastal wetlands which are vitally important to our fishery resources and which are being altered at an alarming rate. We, therefore, request that you strengthen Section 302[i] that allows councils to address habitat concerns. We would offer suggested recommendations for that purpose following our next meeting.



Our council has not had the opportunity to discuss specific amendments to the Act but will do so next week. Therefore, I am reluctant to suggest specific changes on their behalf and request you keep the record open until we are able to provide these recommendations by letter. I feel that the Act as currently drafted is very effective legislation and that our recommendations will largely be minor adjustments to improve the effectiveness of the current system.

We thank you for this opportunity to work with the Committee to improve management under the Act, and I will be pleased to answer any questions or provide my comments on specific issues.

[The prepared statement of Mr. Horn can be found at the end of the hearings.]

Mrs. UNSOELD. Thank you. Mr. Pautzke.

#### **STATEMENT OF CLARENCE G. PAUTZKE, EXECUTIVE DIRECTOR, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

Mr. PAUTZKE. Madam Chairman, Chairman Anderson of the Pacific Fishery Management Council requested that I read the Pacific Council's comments into the record. With your permission, should I do that at this time?

Mrs. UNSOELD. They will be submitted into the record without any objection so you need not waste your time doing that.

Mr. PAUTZKE. Then I will go on with the testimony from North Pacific Council. I am Clarence Pautzke, Executive Director of the North Pacific Fishery Management Council. Thank you, Madam Chairman and members of the Subcommittee, for this opportunity to testify on behalf of the North Pacific Council on important issues involving reauthorization of the Magnuson Act.

The issues being raised this year are complex and reflect our current environment for fisheries management. The fisheries are, for the most part, fully Americanized, the resources limited, and the industry is oversubscribed. There is little, if any, freedom to move into undeveloped fisheries, and a win-win solution is rarely available to managers.

It will not be easy to determine which issues are substantive, which are valid, whether the Act needs major structural change or minor tinkering around the edges. My impression from the National Fisheries Institute Conference last week is that there did not appear to be any groundswell of support from industry for major structural changes to the Act or for a diminution of the councils' role in policy setting for United States fisheries. That does not mean, however, that there will not be many individual concerns voiced by industry over the next few months. I view this dialog as constructive and as evidence that the system is working. Despite the controversy, the councils are moving ahead with fisheries management and conservation decisions.

I am particularly proud of the North Pacific Fishery Management Council. They have chosen to address very difficult issues, those that deal with allocations, limited entry, bycatch, conservation, and protection of sensitive ecosystems components such as marine mammals. All potentially strike at the heart of the socio-economic fabric of the fisheries and the communities that depend

on them. Nevertheless, the council has stepped up to the plate and made some very tough policy calls.

During the last reauthorization, our council chairman identified six critical issues before the Senate Committee on Commerce, Science and Transportation. The first issue had to do with high seas salmon interception and Donut Hole fisheries. He also spoke of inadequate data, limited access, bycatch problems, inshore-offshore priorities, and full utilization. I have summarized council progress on each of these issues in attachment one to the testimony I have submitted.

Concerning high seas salmon and Donut issues, which you are very familiar with, I think we have that problem behind us now. We have controls on those fisheries outside our 200-mile zone, and I think that that is a problem of the past. At least I hope so.

As far as inadequate data, we have a full-blown observer program which provides comprehensive data. It is being supported by industry right now out of their own pocket and soon will be supported by a fee system which the Congress authorized the North Pacific Council to implement in your last reauthorization in 1990.

As far as limited access goes, the council and the Secretary of Commerce have approved a share quota system for sablefish and halibut fixed gear fisheries off Alaska. It will probably be implemented in 1995 although we would like it implemented as soon as possible. That program received more analysis and public input and took longer than any other initiative that I can recall on the North Pacific Council. We also have approved a moratorium on further entry to the groundfish and crab fisheries, and we are developing a comprehensive rationalization plan which will probably involve either licenses or share quotas for those fisheries. It will probably be implemented in 1996.

Bycatch problems still exist, but at least they are more under control than three years ago. In the long run, the most effective solutions may involve individual bycatch quotas for vessels. We will consider that type of measure in our comprehensive rationalization plan.

For inshore-offshore, we have moved ahead with allocations between the inshore and offshore sectors for Pacific cod and for pollock. That program will expire at the end of 1995 as the new comprehensive program comes on line. It includes an innovative developmental quota program to improve the economic and social well-being of disadvantaged Western Alaska communities in the Bering Sea area. That is one of the innovative programs that I think is probably the first in the Nation for fisheries.

Full utilization is an emergent issue that will gain considerable attention in the next few years. The council has already banned pollock roe-stripping. We did that in 1989 and 1990. We will be considering other actions to control nontarget bycatch and waste.

Council actions on these and other issues are elaborated further in attachment two to my testimony which is an adaptation of my presentation to a law symposium last October on how I felt the Magnuson Act was working. I also review in that document the opinions on the roles of the councils in fisheries management as expressed by such statesmen as Senators Magnuson and Stevens and Congressmen Forsythe and Leggett in September 1976 when they

addressed the very first meeting of all charter fishery council members in Arlington, Virginia.

The North Pacific Council has not yet developed a position on reauthorization issues. They will, however, be closely following the major issues as they are identified in debates and hearings around the country. After the major issues have focused, I am sure the council will want to convey their views to you. Thank you for inviting the councils to testify early on in the reauthorization process. I would be happy to answer any questions you might have.

[The prepared statement of Mr. Pautzke can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Pautzke. We will now hear from Mr. Lujan, Chairman of the Western Pacific Fishery Management Council.

#### **STATEMENT OF RUFO J. LUJAN, CHAIRMAN, WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL**

Mr. LUJAN. Thank you, Mr. Chairman. Like the others before me, I thank you for the opportunity to come and appear before this Subcommittee. Also like the others before me, I would like to mention that the comments are my own because our council has not had the opportunity to meet when we received the notice for this hearing so I would like to request that the record be kept open so that we can submit further comments after the council meets in April.

The Western Pacific Regional Fishery Management Council is responsible for nearly 1.5 million square miles of exclusive economic zone waters surrounding American Samoa, Guam, Hawaii, the Commonwealth of the Northern Mariana Islands, and other U.S. islands in the Pacific. Fisheries in this region have experienced rapid growth in recent years. The region is unique because many fisheries are still in their development phase with stocks not yet fully exploited.

The vast size of this region represents a tremendous economic potential and also presents management problems that are quite different from other councils' jurisdiction. This potential has been estimated by the National Marine Fisheries Service as 19 percent of the nation's total potential production, second only to the Alaska region. In 1991, the region produced a commercial fish catch of 29.1 billion pounds valued at \$62 million especial value.

The wholesale value of the Hawaii commercial landings alone are estimated at least \$83 million while the Hawaii Department of Business, Economic Development, and Tourism reported a retail sale of \$250 million in 1990. In 1991, total landings were twice that of 1987. Most of the increase was due to the rapid growth of the Hawaii-based ecologic long-line fleet.

The active long-line fleet has tripled in the past five years from 37 vessels in 1987 to 111 vessels in 1991. Ecologic long-line landings increased fivefold over the same period while revenues in 1991 were four times that in 1987. Most of the growth has occurred in 1989 when a significant number of East Coast and Gulf long-line vessels immigrated to Hawaii. Overutilization of the Atlantic

swordfish fishery and overcapitalization in the Gulf fleet prompted this move to less developed Pacific fisheries.

Current estimates of active Atlantic and Gulf Coast long-liners range from 250 to 300 vessels. The immigration of vessels to Hawaii has helped to reduce effort in the Atlantic swordfish and long-line tuna fisheries. Of the 166 Hawaii limited-entry permits, 76 of those permits are held by vessels originally based in New Jersey, Florida, and Gulf Coast States. This shift in effort has greatly intensified the need for management in the Western Pacific region but has not been accompanied by any increased allocation of management funds to the Western Pacific Council.

The Western Pacific Fishery Management Council is also unique in that the majority of the populations are comprised of four different ethnic groups. In American Samoa, you have the American Samoans which comprise 80 percent of the population. In Guam or CNMI, you have Chamorros. Also in the CNMI you have another ethnic group, the Carolinians. And in Hawaii you have the Hawaiians.

Early on, the Western Pacific Fishery Management Council saw the need to protect indigenous or to grant preferential rights to the indigenous people so the council recommends that the Magnuson Fishery Conservation and Management Act be amended to explicitly require that indigenous fishing rights be recognized in preparation of fishery management plans within the Western Pacific region. This may be most easily done by amending Section 302[h][1], by inserting immediately after the semicolon the following: ...“provided that the Western Pacific Fishery Management Council shall take into account indigenous fishing rights in preparing such fishery management plans.”

The Act should also include language to conserve and manage habitats necessary for any life stage of sustainable fish stocks. Implementation of this amendment would require that adequate funding be provided for habitat research and management and be closely coordinated with other agencies charged with similar responsibilities.

We also support recommendation for regional councils to have a stronger role in commenting on issues that may potentially impact critical habitat on which fisheries are dependent. The authority should be given to councils to effect present and proposed activities that pose a risk to the quality of marine habitats. The council also supports amendment to ensure that adequate funding be provided to the council and National Marine Fishery Service so that the best data is available upon which to base management decisions.

The Western Pacific Fishery Management Council supports an amendment to establish and collect user fees dedicated to partially fund the cause of implementing and maintaining fishery management balance in all areas. We would also like to support an amendment to the Act to grant the authority to the councils to implement vessel monitoring systems. And, Mr. Chairman, the written testimony that was submitted contained other amendments, and with that I would like to conclude my statement.

[The prepared statement of Mr. Lujan can be found at the end of the hearings.]

Mr. MANTON. Thank you very much. That concludes the testimony of panel II, and we will now stand for some questions. My observation is that most of the panelists are in favor of the Magnuson Act as it stands but might have some suggestions for possible clarifying amendments. I see or at least I glean from the testimony that most of the problems are regional in nature, and they are not the same problems, obviously, in each area of operation of the various councils.

I am going to ask Mr. Brancaleone about that part of his testimony where he talked about that nasty word "subsidy". What happens to those who are out of a lot of business if we try to improve a particular fish stock by cutting down on the amount of the catch? There will always be some in the fisheries industry that will remain and some that will be out of business, and I think the suggestion is that maybe there should be some Federal mechanism that would help out those who are financially disadvantaged by a fishery management plan. Whether someone is wholly frozen out of a fishery or limited in their ability to make a catch, should we provide some kind of governmental subsidy to compensate them for their financial loss, and, if so, should it be through a charge upon the industry as a whole, where those that survive and hopefully improve their lot would carry their colleagues who are not able to fish to some extent? Mr. Brancaleone?

Mr. BRANCALEONE. Thank you, Mr. Chairman. The council was not unanimous on this specific issue, and we really didn't get into specifics as to who should be funding it. The reason that we bring it up is because of the hardships which we are about to create under amendment number 5 and the scallop plan. Most of the industry who came to our first round of public hearings on amendment number 5 said that they would be willing to do anything to protect the resource and to bring the stocks back to where they should be or at least close to where they should be, but government has to also help us along—at least sustain ourselves during the process.

I would like to say that, yes, there should be user fees, but I don't think that I could say that on behalf of the council. I think that—I know where I come from in my region particularly in Massachusetts there are boats who are just bordering on going under. I suppose you could say that if we do nothing, they are going to go under anyway, but I think any burden—any added cost to them would just further push them down quicker. So I couldn't give you any specifics as to where we would come from. I would suspect that our council is going to discuss this further and make some recommendations. But, clearly, most of the response that we got from industry was, yes, we are willing to do anything, but we need some help along the way.

Mr. MANTON. Thank you. Does anybody else on the panel have any comment on that question? Mr. Anderson?

Mr. ANDERSON. I think that on one hand if Congress says manage the fisheries and if managing the fisheries when they are overfished means cutting back on efforts at least for a while, it might be a good thing to look at—proposals where you could help the persons during the rebuilding phase. It may be possible to implement a user fee when a stock recovers. The revenues could be

used to pay for the assistance that went to the fishermen during the rebuilding. I would say that the only time financial assistance would be necessary would be when the fishery is overfished according to the Act, and a stock recovery plan is in place. This would help share the pain of the rebuilding process.

Mr. MANTON. Would anybody else like to comment on that?

Mr. VEGA-MORERA. Yes, sir, Mr. Chairman. In our case where we manage artisanal fisheries, we have heard that message. Because of the very poor ability of our fishermen to absorb any economic shock, they do claim that we should help them.

Mr. MANTON. Thank you. A comment was made that the NMFS is overly strict in its interpretations of the law. Is that a feeling that is generally held by all of you? And who would like to comment on that?

Mr. BRANCALEONE. Well, I guess I will take a stab at it, Mr. Chairman, if nobody else wants to jump in.

Mr. MANTON. We are going to hide your identities here.

Mr. BRANCALEONE. Mainly, we are concerned with how NMFS uses the 602's, and we feel that they were set up as, just as I said, guidelines. There have been times that the council or some council members felt that if we could have done small things in increments to try to get things done and to either save one class of fish, it would have been more beneficial than to do nothing. But if you have to go through all this regulatory process and come up with overfishing definitions, it has just been a hindrance at least to our council.

Mr. MANTON. Mr. Anderson, you suggested that North Carolina be split in a north-south way and that the northerly part would join the Mid-Atlantic Council with the southerly part of the split to be, I guess, where it is now. And that is true of some other jurisdictions as well. Is that something you all generally agree with? I mean, it seems to be that the geography doesn't always match the fishery, and does that make sense, to either split a State or have these transitional States in two councils? Does that present a problem to anybody? Yes, sir?

Mr. BOSTICK. Thank you, Mr. Chairman. As you know, Florida, of course, is split into two councils, and I think it works very well in representing Florida in both councils, and the fisheries differ. Having North Carolina in my South Atlantic Council, I can truthfully say that we are a very active participant on the Mid-Atlantic Council at this time. I believe that would probably give the people in the northern part of North Carolina more input if they did have a vote and were an active participant. It certainly doesn't upset the South Atlantic Council if they make that move, but I think at this time we do have input. They have been very generous and allow us a voting membership on their Committees, and we participate in that.

Mr. MANTON. Does anybody care to comment? I just have a brief comment on the bluefish plan. Apparently the State of New Jersey has not joined in the plan. Is that—

Mr. ANDERSON. That is correct. The bluefish plan that was developed by the Mid-Atlantic Council and the Atlantic States Marine Fisheries Commission—all States agreed to it during the buildup phase, but when it came to implementation, New Jersey still has

not come into compliance with that Act. And a lot of bluefish are taken in Jersey. This can hurt the stock, and it is also a problem for other States. When the constituents of New York say, "Why should we have to abide a rule that the folks down in New Jersey don't have to?" and so if one State doesn't, the whole thing can fall apart.

Mr. MANTON. So we really need a lot of cooperation between States if these things are going to work.

Mr. ANDERSON. We need a lot of cooperation, and, indeed, in my testimony, I suggested that I think something needs to be done to get this cooperation with a carrot-and-stick-type of approach so that once these plans are agreed to, they can be implemented effectively. I know it is a very touchy issue, but the fish do not recognize those lines. And if we all don't cooperate, there can be serious problems.

Mr. MANTON. One of the reasons I raised this issue is that I saw Mr. Pallone, who is not a member of this Subcommittee but is a very dedicated member of the full Committee representing the State of New Jersey, has joined us, and perhaps this is something that New York, New Jersey, and the other Atlantic States can work on together. I am not going to belabor my questioning, and I will recognize, if he has any questions, Mr. Kingston from Georgia.

Mr. KINGSTON. Thank you, Mr. Chairman. I have a few questions. Mr. Brancalone, first question: You had mentioned that some of the rules were cumbersome to the extent that maybe less funding would be possible if the rules weren't so cumbersome. Now, you concluded your testimony saying that later you are going to be more specific, and this was just sort of an opening salvo, if you will. Those recommendations that you plan to make, will those be ones that will specifically address the possibility of less funding?

Mr. BRANCALEONE. Yes, sir.

Mr. KINGSTON. OK. Another question that is off that subject a little bit. Mr. Lujan had talked about, I think, 71 of the permits were for New Jersey vessels in your area. Now, how do you feel about that? That is probably not a problem to your folks as much as it is to his, and that kind of gets to this issue with North Carolina getting representation on two different councils. So I guess a two-part question. Are there any other States that need to have dual representation, or that already has it? North Carolina is requesting it, but, obviously, as the Chairman said, you go where the fish are. And the boats from New Jersey are going to American Samoa so how do you balance that out, and is there a need to address this representation, splitting them up in other States?

Mr. BRANCALEONE. I don't know how to answer that question, but we don't have the problem that he has. We haven't had the problem as far as the splitting of the States with the South Atlantic Council or bringing North Carolina into their realm. But I don't have an answer for you.

Mr. KINGSTON. Well, are there any other States that might need to have dual representation on councils besides North Carolina, or is everyone else happy? I assume they are, or they would be telling us so let me just ask another question in the interest of time. One way to rebuild a fishing stock is more reefs, artificial reefs. Do your member States, and those are generally State-funded—are any of



your member States actively pursuing the construction of artificial fishing reefs? And would you consider this part of the solution to the long-term problem?

Mr. BRANCALEONE. In New England, we have no use for them because of the type of bottom that we have. We don't have that problem. We don't have a flat, sandy bottom. There is plenty of habitat for our fisheries, but we have never had to do that. As a matter of fact, at one time a few years ago there was a plan to dump a bunch of tires out as a reef, and there was more opposition because there was no need for it. There is so much hard bottom that it is unnecessary.

Mr. KINGSTON. Well, I know, Mr. Bostick, in the South Atlantic there is a real sandy bottom, and if we could get more artificial fishing reefs, you would have more fish.

Mr. BOSTICK. Yes, sir, and as you know, the State of Georgia has built some artificial reefs. The State of South Carolina has. In fact, the South Atlantic Council has a special management zone area which gives the States protection around those to limit the type of gear that can be used, things of that nature to encourage that activity. But there is still the running squabble amongst the scientific souls as to whether those artificial reefs actually produce biomass or whether they are just accumulating. And to the extent that they are just accumulating, it makes the fish more targetable, easier to catch, and adds to the fishery problems. To the extent that they are increasing biomass, then, obviously, they are a good thing for everyone that is involved.

But the largest area that we have in the South Atlantic Council, Florida, does not have a state-organized program but does more by counties. States in general have just kind of each done their own thing with it. I know the Gulf of Mexico has had oil rigs-to-reefs program going out there.

Mr. HORN. Yes. In the Gulf we have probably more artificial reefs than perhaps any other council to deal with just by virtue of the oil industry with the oil rigs in the Gulf of Mexico. In my mind, I have not gotten a satisfactory answer from the National Marine Fishery Service or anyone whether artificial reefs improve biomass or do they just redistribute the fish that are there already? There is, I understand, some conflict among some of the people in NMFS as to which is correct. In my mind before I would support something like that, I would like to know what I am doing. Am I improving biomass, or am I setting up a baited field so to speak, and that is the way a lot of the discussions go in the Gulf with artificial reefs—are you, in fact, creating an area where it is much easier to target that particular species.

Mr. KINGSTON. Thank you, Mr. Chairman.

Mr. MANTON. I thank the gentleman and recognize the gentle lady from Washington, Mrs. Unsoeld.

Mrs. UNSOELD. Thank you, Mr. Chairman. Mr. Anderson, when you review with your full council your remarks, you might want to look at the Magnuson Act, Section 307[m] (as in Mary). It would be interesting to you.

Mr. Chairman, some have suggested that allowing industry representatives to manage themselves creates problems with conflicts of interest. An editorial in the Anchorage Daily News sums it up



this way. "The council system is ethically bankrupt. We don't let Exxon, Arco, and BP run the Alaskan State Department of Environmental Conservation. We don't put people from phone and electric companies in charge of the State Public Utility Commissions. We shouldn't turn Federal fisheries over to fishermen whose decisions directly affect their personal fortunes." As members or staff of the Council, how do you respond, particularly you, Mr. Pautzke?

Mr. PAUTZKE. Mrs. Unsoeld, the conflict of interest problem or the perception of conflict of interest has been raised to a level of public debate especially in our region of the council mainly with the inshore-offshore which you are aware of. And a major construct of the Act, which I would consider a structural change that only Congress could make, is do you want industry or other users of the resource to have something to say about their destiny in the fisheries? And that is not a question I can answer. It is a question that the Congress has to answer.

As far as conflicts of interest, we have disclosures that every council member has to fill out. They are kept on file, and they can be reviewed by the public at any time. Some have suggested that at a council meeting before a decision is made, that council members stand up and say what their conflict is in making that decision, and maybe that is a good idea, maybe it is not. In our region, I don't think that there is anybody in the audience at our council meetings that doesn't know exactly what the background and the interests of every one of our council members is.

And while I recognize that the article that was in the Anchorage Daily News—people quote that—it has been quoted to me before. It came directly from a Seattle Times or PI article that was generated during our inshore-offshore discussion. And I think that the Congress needs to take a look at the whole construct of the Magnuson Act. I don't particularly think that you are going to get any better decisions if you change it right now. I do not think that in the negotiation process that we have in the council that conflict of interest is any more than a perceived problem. I don't really think it is a real problem.

Mrs. UNSOELD. Mr. Chairman, for the record and to give my colleagues on this Committee a better understanding of the causes for my concern over the council process, I want to read some excerpts from the transcripts of the North Pacific Council meetings where a controversial plan—I acknowledge it is—to allocate pollack was being discussed. One Council member states, "The big thing here is that we all know how we're going to vote. We can hire legal staff to put it in legal order. The whole thing—we could have voted first and taken the afternoon off and gone on a tour of the city while they testified."

Later in the same meeting regarding the quality of analysis necessary for plan approval, a Council member states, "Now what we're looking for, I take it, is the minimum that the Judge will let us by on not knowing which Judge will be looking at it." Later, when the Council was considering whether an alternative management proposal known as ITQ (Individual Transferable Quotas) should be considered, a member of the council asks in response to the decision not to include this alternative, "Should we just include a paragraph in the plan that told the truth? Such as we had people

that were running for public office that didn't want to face the heat of making an ITQ decision?"

The public record is filled with this stuff, but I will stop at this point and just add one more thing for the record which comes from a letter that was written by one of the Alaska Council members to a processor organization. "First of all, I would like to thank you and the members of your association for your campaign contribution." Later in the same letter, it goes on to say, "I'd also like to express my appreciation for your efforts on my behalf for the Council seat. There is no question whatsoever that I never would have been appointed had it not been for your strong last minute lobbying blitz. I'm going to work hard for the council, and I don't think you will need to spend a lot of time trying to determine how I'm going to vote. I believe in the future of this industry, and that means it's our industry." Thank you, Mr. Chairman, for allowing me to put that in the record.

Mr. MANTON. Our next member to ask questions will be Gene Taylor. Oh, I am sorry—back to the other side—Mr. Kingston again.

Mr. KINGSTON. Mr. Chairman, since I am the ranking member over here—a little green at this—would it be possible to have the record left open so that Mr. Young could respond to the discussion?

Mr. MANTON. Yes. We are going to leave the record open. I would ask unanimous consent that the record remain open for 30 days for any additional material or statements.

Mrs. UNSOELD. Yes. And perhaps the Council members, since my time had run out, would also like to submit something to the record to respond.

Mr. MANTON. Yes. It will be open for 30 days for any additional comments. Without objection, so ordered. Now, to Mr. Taylor if he has questions.

Mr. TAYLOR. Thank you, Mr. Chairman. The first question is to anyone on the panel. Given the budget constraints of the nation, the fact that we are going to spend about more than a quarter more on each dollar than we actually have, are we getting our money's worth in spending about \$110 million a year on enforcement of the Magnuson Act? Each one of you, I think, are businessmen. I know Philip is.

Mr. BOSTICK. I will start off by saying you are getting your money's worth, but you could get more for it.

Mr. TAYLOR. And how would we do that, sir?

Mr. BOSTICK. I think that the biggest problem we have had in managing fisheries is lack of management, and that lack of management has come about for a number of reasons. Some of it has been very intentional, but to some extent it has been because of lack of data to allow the managers to manage or at least to give them the reason not to manage. And that lack of management has driven the stocks down. Fishery stocks are just like a bank account you are drawing interest off, and when the balance gets low, you are going to get less interest out of it, and that has happened to a lot of our fishery stocks. We can look back and see what they would have been if we had managed them properly and the difference is, many we have lost.

Mr. TAYLOR. Can I interrupt for a second, sir?

Mr. BOSTICK. Yes, sir.

Mr. TAYLOR. How much of that 110 million, in your opinion—I realize this is for enforcement, but if you read the definition of the Magnuson Act, it includes in the definition of management and conservation—it gives you the authority to enhance the resource. Out of that 110 million, how much is actually going to increase your deposits, so to speak, rather than just count what you are taking out and minimize what you are taking out and manage what you are taking out, getting back to the question of the gentleman, Mr. Kingston?

Mr. BOSTICK. The portion that would be adding to the deposit or should be adding to the deposit at least should be certainly the council's portion that they are getting. Of the 110 million that doesn't go to the councils, there is a lot of other parts of the vehicle that drive that NMFS-NOAA bus that we don't have control of and couldn't really react to. The enforcement issue, for instance—that issue, I would say, no, we are not getting our money's worth. We don't get enforcement.

Mr. TAYLOR. OK. I am going to throw out one last question because, see, under the rules, I am only given five minutes to ask questions. However, with a nice guy like Mr. Manton as the Chairman, you can take as long as you want to answer the questions. OK? So the second half of this question is what should we be doing to enhance the resource, not minimize, not to maximize, if you follow me? We seem to be spending a lot of time counting fish, very little time out there getting more fish into production. What should we be doing? That is the second half of the question, and I open it up to anyone on the panel.

Mr. BOSTICK. What we should be doing is we should be establishing what levels those stocks should be at, and we should be moving toward that goal to get them there as soon as practical and not putting it off to somewhere in the next century.

Mr. ANDERSON. Yes. I would agree. There are certainly a lot of problems with the fish stocks—habitat, pollution, et cetera, and efforts that attack these problems as well as such things as artificial reefs can help, but I don't think there is really any real substitute for a plan which cuts back fishing mortality on those stocks that are low. Somebody is going to have to bite the bullet to let those stocks grow.

Mr. HORN. Yes. I would like to comment. You asked the question are we getting our money's worth. I think you have to ask yourself what is the value of the total sum of all the fishing industries in the different areas that are created through the fisheries themselves. And the other question you asked is, are we spending more time counting fish. Well, I don't think in my mind that that is correct. I think that is what we need to do more of. We are implementing management programs on industries with information that is real bad. We are beat over the head with this statement "best available information." Well, we have got a lot of real poor information that we are using, and we are dealing with people's lives and livelihoods with information that should be much better. And I would like to see a much better system through NMFS for data collection.

My personal opinion is that I think they have too many people doing too little work, but counting fish is very important and very vital to the management process. If you don't know what you have got, how can you manage anything to start with?

Mr. TAYLOR. Mr. Horn, getting back to your question, if we have too many people and they are not even doing what they are required to do, what are they doing rather than at least counting fish? There are, obviously, not enhancing the resource. I have gone round and round with NMFS on this, and to get one of those guys to shove one piece of rubble overboard to have the very beginnings of a reef is beyond their comprehension. So we know they are not doing that. What are they doing with the money we are spending for NMFS?

Mr. HORN. Well, I assume it is going for salaries, but the area that there needs to be some more improvement in are people qualified to do the data collection and the analyzation of the information that they do get. Just as in the Southeast Region, we are working on some plans that—we are using the same people that—the South Atlantic area and Caribbean area are using the same scientists, but we have an excessive number of plans in our area. The South Atlantic has got a large number of plans, and there are not enough days in the year for these scientists to analyze and give us the proper information that we need to manage these resources. We need to transfer some of those people around so they can do the work.

Mr. TAYLOR. Mr. Horn, it has been said of people who have attended the meetings that regardless of the scientific data, for better or for worse that is presented to the council, that most of the councils' decisions are made either based on politics or emotion. The question is if that is the case, shouldn't we just spend the money on resource enhancement since the council isn't going to listen to the data anyway?

Mr. HORN. Well, I think that that is pretty much an opinion that people have. One of my comments to people that make those statements is you need to have more interaction with your council members. I would have to guess that in our council, and I can't speak for the rest of them, but—and I can't speak for each council member, but from my perspective, I think most of our council members—we attend the meetings, we listen to the information, we talk to individuals that are going to be affected who are out there harvesting the resource, and I think that we make fairly objective decisions. And seldom am I ever on a winning side, but I think the council members in our area do a pretty good job with it.

Mr. MANTON. I think the gentleman's time has expired. Mr. Hamburg?

Mr. HAMBURG. Mr. Chairman, I wanted to——

Mr. MANTON. I am sorry. If there are additional responses to a member's question, we would appreciate it if you would submit them for the record, and we will move along to the next member.

Mr. HAMBURG. Mr. Chairman, I wanted to particularly refer to something that Mr. Bostick brought up. I think in the second paragraph of his testimony he talks about the need for a new management ethic that stresses conservation, and I wondered if there is a perception among any of you gentlemen that in the regulatory

measures that are implemented under Magnuson that too much emphasis is being put on economic concerns as opposed to conservation concerns? And if that is the case, should Congress become involved in changing that in some way, or is that even a general perception?

Mr. BOSTICK. I believe what I was moving for there so that you understand where I am coming from is when there is a doubt, I think that is the direction we should be going for sure. And unfortunately in the past, that has not been the case. Conservation has been something that we manage more and conserve less in too many instances, and I think that inaction that I had spoken of has been part of our conservation problem. If you look at the results of the various councils certainly on the Atlantic side, we have gone downhill with most of our stocks. There are a few that we have rebuilt, that we have addressed properly, but, in general, we have gone downhill with them. We haven't conserved them so whether Congress needs to address it or you just need to give a little more direction to the councils themselves to be more concerned with the stocks, there is a need.

Mr. HAMBURG. Yes.

Mr. PAUTZKE. In the North Pacific, I would say we have very conservative management; an example is our Bering Sea groundfish stocks. The optimum yield on those stocks right now is capped at 2 million metric tons, and the allowable biological catch as assessed by the biologists is about 2.5 million metric tons so there is about 500,000 metric tons that are not being fished right now in the North Pacific that possibly could be if we ever raised the cap. But we have kept that cap at 2 million metric tons out of concerns for marine mammals, for ecosystems interactions, bycatch, a whole variety of reasons, and we have been blessed with a resilient resource. Individual stocks cycle up and down, but when the foreign fisheries were out there, when the councils first came on board in 1976, they were taking about 1.7 million metric tons, and so I think we have conservative management up there.

And going back to one of the other comments, we follow very closely, and I can document that for you, the advice of our scientific and statistical Committee that meets every time the council does on all conservation issues. And we follow very closely the advice of our advisory panel which is the industry side, and most of our motions that are brought onto the floor of the council are probably nine times out of ten or 95 out of 100 even are based on an advisory panel position or an SSC position.

Mr. HAMBURG. Thank you. Mr. Chairman, I had one other question. Would you like to break to go vote and come back, or what is your pleasure?

Mr. MANTON. Well, I thought maybe we could wrap it up, but if you would like to come back—

Mr. HAMBURG. I don't know about my other colleagues here.

Mr. MANTON. If you would like, I am perfectly willing to come back. Ms. Cantwell—

Ms. CANTWELL. I just had a short question.

Mr. MANTON. Sure. Why don't we go to the gentlelady's question?

Ms. CANTWELL. Thank you, Mr. Chairman. I will be brief as possible. In fact, I will make this very simple. If you could just give me two yes-no answers, my first question is in regards to procedural matters, the Act gives the councils the ability to establish procedures on conflict of interests aside from the disclosure forms. First of all, a yes-no answer, have each of your councils done any additional procedures to prevent conflict of interests? And the second yes-no answer I want to know is do you think Congress should take further action in establishing clarity in the Act on conflict of interest? Just yes or no.

Mr. BRANCALEONE. Just go around?

Ms. CANTWELL. Yes.

Mr. BRANCALEONE. Yes.

Mr. ANDERSON. No-yes.

Mr. BOSTICK. Yes-yes.

Mr. VEGA-MORERA. No-no.

Mr. HORN. Yes-no.

Mr. LUJAN. No-yes.

Mr. PAUTZKE. No-no.

Ms. CANTWELL. Thank you, Mr. Chairman.

Mr. MANTON. That concludes the questions by the members of the Subcommittee. Mr. Pallone, our visiting member, we don't have much time but—

Mr. PALLONE. I know, Mr. Chairman, and if I could just say that the reason I came today, and I would like to come to some of the future hearings, is because in New Jersey and in particular in my constituency, there are tremendous problems that are constantly being brought up about the Magnuson Act in terms of the way the councils are structured, what fisheries come under the different councils, and I think that the fact that the bluefish plan was mentioned is just an indication perhaps of how concerned and upset many people within the New Jersey fishing community are with the council and the whole Magnuson Act so what I hope to do over the next few hearings is to bring those concerns to your attention. I know we don't have time now, but that is why I am here, and that is why I plan to come to some of the hearings with the Chairman's permission. Thank you.

Mr. MANTON. You are welcome at any time, Mr. Pallone. I think that concludes our hearing. We are off to a good start. I look forward to additional hearings as we shape the reauthorization of the Magnuson Act. Thank you all for coming, particularly those who have come very long distances. We appreciate it. The hearing is adjourned.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned, and the material submitted can be found at the end of the hearings.]

# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION

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WEDNESDAY, APRIL 21, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:18 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Hughes, Unsoeld, Taylor, Lancaster, Hamburg, Cantwell, Young, Ravenel, Kingston.

Staff Present: Jeffrey Pike, Will Stelle, Sue Waldron, Jim Mathews, Greg Lambert, Lori Rosa, Amy Robin, Marybeth Beetham, Jed Brown, Jean Flemma, Jim Hoff, Mike Quigley, Chris Mann, Manna Chang, Harry Burroughs, Cyndi Wilkinson, Rod Moore, Jill Brady, Julie Roberts, Laurel Bryant, Thomas Henderson, Margherita Woods, Gene Buck, Kip Robinson, Ed Lee, John Rayfield, Tina Leibzig.

## STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK

Mr. MANTON. Ladies and gentlemen, thank you for your patience. I think we can get started. Some of the members are still voting, but I know everybody's time is valuable, and I think we will move along.

The Subcommittee today will continue its series of hearings on the reauthorization of the Magnuson Act. Witnesses include representatives of the environmental community as well as commercial and recreational fishing interests. There are many who are disappointed because they cannot testify today. However, we will have many more hearings, and I assure you we intend to listen to the views of all interested parties. Various commercial and recreational fishermen are especially eager to share their views on this important legislation, and, accordingly, I plan to hold field hearings so that we can hear from those with firsthand experience.

As most of you are aware, I am new to fisheries management. However, over the past few months, I have had the opportunity to meet with and learn from many experts in the field. Virtually all interested parties, commercial fishermen, conservationists, scientists, and recreational fishermen seem to agree that unless we take action to better protect and conserve our fisheries resources, there will be an economic and environmental disaster in the years ahead.



Many believe our Federal management plans have failed to establish an adequate and fair regime to protect our valuable fishery resources, while others feel that the Fishery Management Councils are stifling the commercial fishing industry through complicated regulatory programs.

I believe our lead witness will give us a dismal assessment of our fisheries that may shock many members of this Subcommittee. Our mission, as we set about to amend the Magnuson Act, is to determine the true status of our national fisheries and the adequacy of our current management practices. We must ensure we defy any dire predictions, reverse unacceptable trends and stock viability, and preserve our fisheries for future generations.

I would ask the first panel to come forward, and that will be Suzanne Iudicello, Senior Program Counsel, the Center for Marine Conservation, representing the Marine Fish Conservation Network; Dick Gutting, Vice President, Government Relations, National Fisheries Institute; Norville Prosser, Vice President, Sport Fishing Institute; Larry Mercurieff, City Manager, city of St. Paul, Alaska; Robert Hayes of Bogle & Gates, representing the Gulf Coast Conservation Association; and Joe Blum, Executive Director, American Factory Trawler Association.

The Chair recognizes Mrs. Unsoeld from the State of Washington for an opening statement.

#### STATEMENT OF HON. JOLENE UNSOELD, A U.S. REPRESENTATIVE FROM WASHINGTON

Mrs. UNSOELD. Thank you, Mr. Chairman. I will try to be brief. During our last hearing on the Magnuson Act, I cited specific examples of discrimination and conflicts of interest that have occurred under the current council system. In a written response, the gentleman from Alaska has, among other things, offered to work together to resolve these issues. This commitment is appreciated, and I suggest we begin by calling for a future meeting on the Department of Commerce's Inspector General asking him to come to this Committee to report on his criminal investigation of the council system because while no legal action resulted from the IG's investigation, his report is hardly a vindication of the councils.

According to the IG, no legal action was taken because the inappropriate conduct uncovered was found to be permitted under the Act. Quoting from the report, "We found that the conduct that is forbidden under criminal conflict of interest laws in other contexts is permitted under the laws establishing the councils. The legal framework governing councils' operations make this possible. It anticipates and, we think, invites conflict of interests."

Mr. Chairman, I suggest the Inspector General has a lot more to say on this subject and believe his insights would greatly assist this Committee in fixing a Fisheries Management system labeled "ethically bankrupt" by the Anchorage Daily News. Thank you.

Mr. MANTON. I thank the gentlewoman. At this point, the Chair without objection would like to enter into the record a statement by the Honorable Jack Fields, ranking Republican member of this Subcommittee.

[Statement of Mr. Fields follows:]



STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that this Subcommittee is continuing its examination of issues surrounding the reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA).

I will be interested to hear the views of those present today, and perhaps some answers to the complex problems plaguing the domestic commercial fishing industry. I am particularly interested in the bycatch problem. Unfortunately, the attention to this problem has centered in the Gulf of Mexico and the shrimp fishery. Gulf shrimpers have been under pressure to reduce the incidental take of sea turtles in their shrimp trawls, and now are coming under increasing pressure to reduce or even eliminate incidental takes of other fish species.

There is an even bigger question which is implicit in the views we are going to hear today. That question is whether the MFCMA needs to be completely reworked or simply fine tuned. Will we see a change in attitude about the fisheries service within NOAA? And, will we see a change in attitude within the fisheries service itself?

I hope the Committee will be able to work with everyone involved. Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes Ms. Cantwell of Washington.

Ms. CANTWELL. Thank you, Mr. Chairman. I would just submit my statement for the record.

[Statement of Ms. Cantwell follows:]

STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, I would like to express my gratitude to you for continuing the hearing process on the reauthorization of the Magnuson Act. I look forward to investigating further the issues raised at the last hearing, in particular, continuing to assess the Act's strengths and weaknesses, and identifying those areas where change is needed and where the present regime is working.

The Magnuson Act is directly responsible for the growth of the U.S. fishing industry. The 200 mile coastal Exclusive Economic Zone (EEZ) it established under U.S. jurisdiction meant that, in 1992, harvesting and processing vessels in the 200 mile zone were almost exclusively American flag vessels. As a result of the Americanization of the U.S. fishery, we have seen significant growth in the U.S. fishing industry. For my home district and the Puget Sound Region, the result has been the development of a billion dollar industry.

The "Americanization" intentions of the Act represent a truly successful chapter in Magnuson history. However, the goals of the Act do not end there. We must conduct a comprehensive evaluation of this national fisheries policy to ensure the same measure of success that exists in the "Americanization" process is also found in conservation and management.

Various sectors of the fishing industry, conservation groups and academics each have expressed concern that the management of our Federal fisheries resource is governed by people who are making decisions for their own economic benefit, that council representation is not equitable, and that current fisheries management plans generated from councils have not resulted in rational fisheries or effective conservation. The widespread perception is that something is wrong with the system, Mr. Chairman. We must evaluate whether we can streamline the process of planning and regulating fisheries to make management more responsive to changing conditions.

It is my hope that through the reauthorization process, we will conduct a thorough evaluation of these concerns and of all aspects of the Act. I look forward today to hearing from conservation and industry representatives. The information we need lies in our home districts, with the people who see the successes and failures of Magnuson at work every day. These are the people we need to listen to, Mr. Chairman. These are the people to whom we are accountable. Thank you.

[Statement of Mr. Hughes follows:]

STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, I want to commend you for continuing the series of hearings on the Magnuson Fishery Conservation and Management Act. This hearing is particu-

larly timely as the fishing season in my district is well underway. As is typical of this time of year, problems in the management of our fisheries resources are brought to the forefront as fisheries realize the impact of complying with increasingly strict conservation measures.

Most recently, I have been made aware of problems with amendments to the fluke management plan, problems in the scallop fishery, and concerns about the poor mackerel season. These problems and concerns vary with the fishing season and the target species. However, they all focus attention on the need to revisit our fisheries management and conservation practices.

They also focus attention on the dearth of scientific data required to assess the state of our fisheries resources. Without adequate scientific information on stock assessments, fishing mortality, bycatch, reproductive potential, migratory patterns, important physical factors which influence timing and location of spawning, and the biology and movement of species, we can not develop appropriate management plans.

Furthermore, management of one species by one State will have little effect if a neighboring State along that species' migratory range does not also adopt an equally effective management scheme. Accordingly, I intend to work with this Subcommittee to address this discrepancy through the development of interjurisdictional fisheries legislation.

I also intend to work with this Subcommittee to ensure that a system is established which proactively addresses fisheries conservation issues. Indeed, fishery management plans must be implemented while a fishery is still able to respond to the plan, not after it has declined to the point of no return.

Moreover, the economic and social impacts on the fishing community of extremely restrictive conservation measures must also be considered as the effects may well be devastating and in many instances irreversible.

Finally, we need to move towards improving the oversight of our fisheries and enforcement of regulations that will ensure the conservation of these vital resources. Indeed, sound stocks are essential to the economic base of many of our coastal fishing communities.

Our goal should be to conserve our commercial and recreational fisheries in sufficient quantities to provide for the economic benefit of a viable commercial harvest and the social advantages associated with a recreational fishery. I am hopeful that this series of hearings on the Magnuson Act will help us to achieve this goal.

Mr. Chairman, thank you again for holding this hearing. I would like to welcome today's witnesses, and I look forward to their testimony and suggestions for improving the Magnuson Act.

Mr. MANTON. We are awaiting the arrival of Mr. Young, but I am informed by counsel that we will probably best serve our time by proceeding. We will allow Mr. Young the opportunity to give his opening statement when he arrives here from the floor. I think we will start with the first panel in the order they were called, and maybe I am pronouncing it correctly this time. Ms. Iudicello?

Ms. IUDICELLO. Iudicello.

Mr. MANTON. Iudicello. I am sorry. Being from New York, I should know how to pronounce an Italian name with a hard C.

Ms. IUDICELLO. That is OK.

Mr. MANTON. And I apologize once again.

#### STATEMENT OF SUZANNE IUDICELLO, SENIOR PROGRAM COUNSEL, CENTER FOR MARINE CONSERVATION

Ms. IUDICELLO. Good afternoon, Mr. Chairman. My name is Suzanne Iudicello. I am counsel with the Center for Marine Conservation, but I am speaking today on behalf of the Marine Fish Conservation Network which is a new group which includes nearly two dozen conservation, sport, and commercial fishing groups who have come together around a number of common themes related to marine fish but mostly out of our concern for the health and abundance of America's fish and America's fisheries.

There are eight themes set out in our national agenda which has been made available to the members of the Committee, and you will be hearing about one of those in particular from my colleague, Jerry Leape from Greenpeace, a little later. The steering committee of the Network is made up of the World Wildlife Fund, the National Coalition for Marine Conservation, National Audubon Society, Greenpeace, and ourselves, the Center for Marine Conservation, and we are very pleased to be able to participate today. We are also very pleased to provide the distaff side at the table, which I understand is not often seen here.

Unlike the witnesses that you heard at your hearing a month ago, our job today is not to be here to tell you that everything is fine, that the Magnuson Act has been a wonderful success and shouldn't be changed in any way. We are here to bring a new perspective, which is that the Magnuson Act has succeeded in one of its goals which was to develop America's fisheries, but to tell you that it is time to get out of the development mode and get into the conservation mode and to give you our view on why the "C" has been lost from the FCMA.

There are three reasons in our view that the curve of the nation's fish populations, no matter where you look from coast to coast, is going inexorably downward. Those reasons are that the Act itself doesn't provide for conservation, that the implementation of the Act has been lacking, and, finally, that there hasn't been a clear voice—a constituency for fish heretofore. And so that is why the Network came together, and we have adopted an eight-point agenda to put the "C" back in the FCMA.

Our main points are to eliminate overfishing and rebuild depleted fish populations; to relate the precautionary principle to marine fish; to address conflicts of interest on the Regional Fishery Management Councils; to improve the management of highly migratory species; to minimize bycatch problems; to conserve fish habitat; to enhance enforcement and monitoring; and to seek fiscal support for conservation oriented fisheries research.

I would like to just take a moment to stray from my testimony here and share with you an article that was in The New York Times yesterday—the Science Times—titled, "Biologists Fear Sustainable Yield is an Unsustainable Idea." And this relates to testimony that you will hear later about the precautionary principle and why we are urging you to get off the development thrust of the FCMA and get into some precautionary risk averse management approaches. And I quote—for one thing, three fisheries biologists writing in the Journal Science say, "Science is probably incapable of predicting safe levels of resource exploitation, and even if accurate predictions were possible," they contend, "history shows that human shortsightedness and greed almost always lead to overexploitation and often to the point of collapse of the resource." I will submit a copy of this with our statement for the record.

So what is it that is going on that is the dismal picture you promised that I would talk about? You have heard the numbers. You have heard the numbers from the agency. You have heard numbers from scientists. You have heard numbers from your own constituents who fish. We all know that people are working harder to catch fewer fish. In our view, we are all getting numb to the

numbers so we would like to pose the questions and the problems to you in a different way, and these are the kinds of issues that have brought conservationists into the fray this year in larger numbers than ever before.

First, after nearly two decades under the FCMA, there are no fishery management plans for many species of commercially valuable and important fish such as, for example, highly migratory fish. Even where plans exist for depleted populations, they don't contain rebuilding targets or time tables. While run after run of salmon gets closer to the Endangered Species List, we still have no authority for the National Marine Fisheries Service to protect habitat.

There is no national policy on bycatch. Despite congressional action to ban roe-stripping, parts of the Alaskan fleet have figured a way to get around it. We have no national policy that requires testing and certification of new gear until it gets into a fishery and causes the harm and then the environmentalists have to come and get it out.

We have tied our own hands with regard to highly migratory species and prevent our own fishery managers from taking action to conserve depleted populations such as bluefin and swordfish.

And, finally, let me close with a question that goes again to your last hearing, why is it that every council representative who testified before this subcommittee last month told Congresswoman Cantwell that they did not want any requirement in the Magnuson Act that they promulgate their own conflict-of-interest rules to govern their actions? We will be working on answering these and a lot of other questions in our own group, and we hope to work with you as you continue your deliberations on the reauthorization of the FCMA. Thank you very much.

[The prepared statement of Ms. Iudicello can be found at the end of the hearings.]

Mr. MANTON. Thank you, Ms. Iudicello. Just a cautionary note, and I think the prior witness was very much on time, but those little lights that you see there, when the orange light goes on, it's an indicator that you should start to summarize your comments. When the red light goes on, five minutes is up, and hopefully your statement will be concluded. I know some of you have more voluminous statements than you can handle in five minutes, but I will leave it to you to be able to conclude your testimony in five minutes or under. I think that way we will get through this list of witnesses this afternoon with some dispatch. So with that said, the Chair will recognize Mr. Gutting.

**STATEMENT OF RICHARD GUTTING, VICE PRESIDENT,  
GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE**

Mr. GUTTING. Thank you, Mr. Chairman. I am Dick Gutting with the National Fisheries Institute. The institute is the largest organization representing the seafood industry. We have 1,000 companies throughout the United States, and they are engaged in all aspects of the industry from harvesting, processing, marketing, all the way through to the retail side. Many of our members have served as council members. They have served on council advisory committees. We have made a major investment over the years in the Mag-

nuson Act because it is a critically important Act to the seafood industry.

The great strength of the Magnuson Act is its flexibility. While it has been amended many times, its basic structure remains; the councils, the concept of optimum yield, and the national standards. These fundamental principles in the Act continue to be sound. They provide the flexibility necessary for the management system to adjust to changing circumstances. There are, however, some new circumstances that we face today in our fisheries which we would like to draw to your attention which may prompt the need for changing the Magnuson Act.

The first of these concerns the conflict of interest of members of the councils, which was the subject addressed by Representative Unsoeld. The fact of the matter is that in many fisheries, we have run out of fish. It is becoming increasingly more difficult to make fair and equitable allocations among the fishermen. The demand for fish is increasing. There are too many vessels, and these are becoming tougher and tougher decisions.

At the same time this is occurring, the American people are holding all public officials to a higher standard of ethical behavior. There is a perception out there about possible conflicts of interest, there are front page stories about conflicts of interest. The management system cannot be effective unless it has the trust and confidence of the American people. This is an issue, it has been identified, and we in the seafood industry encourage the Committee to pursue it to be sure that we have the right safeguards in place.

The second issue we would highlight for the Committee, and ask you to look into, concerns the question of waste and bycatch. Once again, as we come up against the biological thresholds in our fisheries, if we are to find more fish, deliver more to the consumer, we can't afford to waste fish. This Committee has begun to address these issues. In the last round of reauthorization, a bycatch program was set up for the North Pacific Council. There was another program set up for the shrimp trawl fleet in the Gulf of Mexico. These were extremely constructive amendments. Unfortunately, the Administration has fumbled, there have been delays, the funding has not come through, and we haven't really seen the benefits come through on these programs. Particularly for the shrimp amendment, we would suggest that the research is not completed, and we believe more time is going to be needed before we ought to start regulating the shrimp fleet.

The third issue concerns highly migratory species along the Atlantic Coast. This was a very contentious issue in 1990, and the Congress dealt with it and we think in a very wise way. I suspect there are going to be some witnesses coming on after me who are going to urge this Committee to retreat, to pretend that our fisheries exist only within our 200 miles. This, I submit, is precisely the wrong direction we should go with our fisheries management system. We need to reach out to the straddling stocks. We need to reach out to the highly migratory species which are shared by many nations and build effective mechanisms so that we can manage these on a multinational/international basis. That is the direction this Committee took in 1990, and I applaud you. I believe we ought to continue in that direction.

However, once again, in implementing the amendment in 1990, there have been some fumbblings, and we have not yet seen the Administration develop an open, fair, public process. We hope this will change through administrative action, but if it doesn't, we would ask you to give us the kind of protections and interplay that will involve the public in a much more constructive way.

I see I have one more minute, and I have one more item, Mr. Chairman, and that concerns the consumers. All of you have consumers back home that enjoy the products that our fisheries are producing. Your consumers are asking for greater assurance that the food we produce in our fisheries is going to be wholesome and safe. Dr. Kessler of the Food and Drug Administration recently announced that he is going to move forward with a new inspection program. This is a very constructive act.

However, fishery managers also have a role to play. Fisheries which are incapable of producing wholesome food need to be restricted. Fishery managers have got to coordinate their actions with those who are responsible for food safety. This has been occurring under the Magnuson Act on an ad hoc basis by implying authority, and we would ask the Committee to investigate whether or not we need to make that authority clearer. These are the four issues that I wish to bring to your attention. Thank you.

[The prepared statement of Mr. Gutting can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Gutting. The Chair will recognize Mr. Young of Alaska for a brief opening statement.

#### STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. YOUNG. Thank you, Mr. Chairman, and I again apologize for being a little late. As you know, we just had a vote. You were back here before I was. You are a little faster than I am and a little younger too.

I would just like to make one comment. My good friend from Washington, Mrs. Unsoeld, commented concerning the IG inspection. I just hope that she and this Committee remembers one thing that I feel very strongly about. Just because one investigator recommends something does not mean that another person is guilty. It also means if there is a guilt, it has to be prosecuted by the Judicial Branch of this government. I just went through one of these last year, and our role is to listen to what has been reported but not to prejudge. By prejudging, we are superseding our authority, and we are not a Judge and jury body, not this Committee. If there is something criminally that had been done wrong, then it has to be handled in another branch of the government, not this one. Thank you, Mr. Chairman.

Mr. MANTON. Thank you, Mr. Young. We will go back to the panel, and our next witness will be Norville Prosser, Vice President, Sport Fishing Institute.



## STATEMENT OF NORVILLE PROSSER, VICE PRESIDENT, SPORT FISHING INSTITUTE

Mr. PROSSER. Thank you, Mr. Chairman. I am Norville Prosser, the Vice President of the Sport Fishing Institute. For those of you who may not know, SFI is a nonprofit fishery conservation organization, and we represent the fish conservation needs of the sport fishing industry. Mr. Chairman, without doubt, the Magnuson Act is the most important piece of legislation governing the conservation and management of our nation's Federal marine fishery resources, and the success of that particular legislation to a great degree will deliver the success of our industry in the future. That industry, by the way, includes 13 million U.S. residents who participate in recreational fishing. We estimate that they generate \$17 billion in economic activity per year. That translates to over \$4.5 billion in wages and salaries and the employment of 290,000 folks. With prudent stewardship of the marine fishery resource, all of those numbers can be greatly increased, and that is what we are here to talk about today.

Most assuredly, the recreational fishing industry is fundamentally concerned with the deficiencies of the management system under the Magnuson Act which has, in far too many cases, failed to provide for wise resource conservation and effective management. Instead, it has too often allowed for continuing overexploitation of economically and socially important fish stocks. For example, the National Marine Fisheries Services estimates that out of a total of 26 species of recreational importance on the East Coast, 18 or a full 67 percent are currently overexploited.

Mr. Chairman, we believe that conservation must be elevated as the primary factor in the administration of the Magnuson Fishery Conservation Management Act. In the best interests of all users of our nation's marine resources, the long-term conservation needs of the resource must be placed before the short-term social and economic needs of the Nation including recreational and commercial users alike.

The Act and the council system must strengthen their emphasis on conservation and rebuilding of depressed stocks. We have recommended in our written testimony a number of changes. The Act should be amended so that fishing mortality or total allowable catch, cannot exceed the maximum sustainable yield. For overfished or depressed stocks—the TAC should reflect specified target levels and a recovery and rebuilding schedule. Optimum yield, as it is defined in the Act, should be employed to determine how the total allowable catch is distributed among the various user groups.

Mr. Chairman, our formal written statement discusses a number of other needed improvements to the Act including the need to incorporate a definition of bycatch and to make it a national policy to minimize the negative impact of bycatch on fish populations and the marine ecosystem. The Act needs strengthening to provide better protection of critical marine habitat. Suggested amendments are offered to improve conservation of highly migratory species so that the U.S. is able to implement more stringent conservation measures than those adopted by the International Commission for the Conservation of Atlantic Tuna.

We suggest that if the Act were amended to give the Section 602.11[c] guidelines, the force of law, over-fishing and stock rebuilding requirements would be clearly understood and more vigorously implemented by the councils. The councils' members' roles would then be largely changed to the very difficult issue of allocation among competing user groups. Scientists should decide the total allowable catch, and the council should decide who, how, where, and when those fish are harvested. We support the creation of a fair and equitably-funded Marine Fisheries Management Trust Fund to provide the enhanced funding necessary for implementation of improved management programs.

Mr. Chairman, we conclude in our testimony that the Act and the council system it created are far from perfect and changes are definitely needed. We are less certain that this will occur through the normal reauthorization process given the congested calendar of the 103rd Congress. We suggest the Congress may want to consider earlier models and perhaps congressionally charter a comprehensive Magnuson Review Commission similar to the Eastland Commission of 1973. The objectives of such a commission would be to fully evaluate the effectiveness of the Act. The evaluation should include the active participation and involvement of all concerned interests in U.S. marine fisheries. Like the Eastland Commission, it is suggested that a timeframe be defined by Congress and an appropriation be authorized to employ the staff necessary to undertake the investigations of the suggested commission.

Mr. Chairman, that concludes my oral comments. I would be pleased to answer any questions you might have.

[The prepared statement of Mr. Prosser can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Prosser. I think we will wait, if the members agree, till the full panel concludes and then we will entertain questions. Now, who is next here? The next witness is Larry Merculieff. Am I saying it right? Correct me if I am wrong.

Mr. MERCULIEFF. Close, Mr. Chairman. It is Merculieff.

Mr. MANTON. Merculieff. OK.

#### STATEMENT OF LARRY MERCULIEFF, CITY MANAGER, CITY OF ST. PAUL, ALASKA

Mr. MERCULIEFF. Thank you, Mr. Chairman. I am the Manager for the city of St. Paul in Alaska's Pribilofs which are located in the middle of the Bering Sea dependent upon fisheries, and I am also the coordinator for the Bering Sea Coalition which is composed of coastal communities along Alaska and the Bering Sea which is focused on the health of the Bering Sea ecosystem and the viability of indigenous cultures that are dependent upon Bering Sea resources.

I will cut to the core of the testimony. We believe the Magnuson Act has worked very well in many areas since it came into effect in the '70's, and we have an opportunity now to improve this Act in light of knowledge gained about the environment and marine ecosystems since the Act was passed almost 20 years ago, and it can be done in many cases if there is a political will without any amendments to the Act.



Scientists, managers, and the fishing industry now understand the full impact that inadequate research and management can have on the viability of any fishery given the fishery collapses around the world including the George's Banks, the Grand Banks, the North Sea, the Bering Sea, Eastern Canada, and the list goes on in the Northern Hemisphere. And it behooves this Committee, if it hasn't already done so, to review and study the fundamental causes behind these collapses in hopes that we can avoid this if at all humanly possible in the future.

In our study of fishery management and scientific research in the Northern Hemisphere, we found several barriers to effective fishery research and management which still exists today. One: In all fishery collapse cases, other marine-dependent species connected in the food web showed signs of food stress long before fishery collapses actually occurred. Responsible research and management institutions which should have been closely coordinated particularly in the exchange of information were focused on their own missions. Coordination was ad hoc, and this coupled with the fact that no institution had the mission of synthesizing all the scientific and other information made it impossible for anyone to step forward with any credibility to warn of any impending fishery collapse.

Two: Research is single-species oriented and highly specialized within disciplines making it difficult, if not impossible, to document the connection between declines of species in the same food web let alone connected food webs. Scientists in different disciplines even within the same agencies frequently do not coordinate, exchange, or synthesize data except on an ad hoc basis, if at all. And politically, scientists are put to the impossible test of proving a hypothesis definitively before policymakers take action. And I would like to meet one scientist in the world who will say any research finding is definitive. It is a standard which is convenient for those who seek short-term profits in a fishery at the expense of long-term gain.

Three: We see a very disturbing trend of systematically excluding independent researchers from participating in important research in all fields. Even environmental groups are using in-house researchers, and such a system discourages new perspectives in research and management and increases the possibilities of misdirected research and management.

Four: Environmental managers around the world are beginning to recognize the value of observations and knowledge of indigenous peoples who have lived in an area for perhaps thousands of years and understanding what may be happening in their own bioregion. However, the scientific and management communities consider indigenous knowledge and observations anecdotal because they can't incorporate this holistic versus specialized information into their systems. And we who have lived in the Bering Sea, for example, for nearly 10,000 years had flagged the beginnings of the decline of the Steller sea lion 10 years before they actually occurred. But, yet, our observations were given no credibility within the scientific and management communities despite numerous efforts to flag these problems in many official forms in the past.

In closing, we would like to note for the record once again that these exact same barriers exist today in the Bering Sea. Conven-

tional wisdom is telling everyone that the fishery is healthy in the Bering Sea, but this wisdom ignores the fact that 14 key species are in a state of severe and sustained decline. Three of these species are already classified threatened or depleted under the Endangered Species Act or MMPA, and at least six of these species are in the pollack food web.

We predict that more will follow in quick succession unless there are fundamental changes in research and management paradigms. Specifically, we recommend, one, the evolution of single-species management into ecosystem management regimes; two, eventual elimination of institutional barriers through the appropriations process where interagency and interdisciplinary research and management are mandated; three, mechanisms be installed to utilize independent researchers and cross-cultural perspectives on a multinational basis; and, four, restructuring of management systems in a way that reflect these paradigms. We submitted more specific information regarding the Bering Sea for the record, Mr. Chairman, for anyone who is interested. Thank you.

[The prepared statement of Mr. Merculieff can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Merculieff. The next witness is Robert Hayes of Bogle & Gates representing the Gulf Coast Conservation Association.

#### STATEMENT OF ROBERT HAYES, BOGLE & GATES, WASHINGTON, DC

Mr. HAYES. Thank you, Mr. Chairman. I would like to thank you for allowing us to testify today, and I would like to tell you about the Coastal Conservation Association. CCA has chapters in States all the way along the Atlantic and Gulf Coasts. We don't have any in Long Island yet, but we are working on that; we have them from Freeport, Maine, to Brownsville, Texas. CCA is composed of recreational fishermen who are concerned about the conservation of the nation's marine resources.

I want to cover three topics today. I want to talk about restoring public confidence in the council system, changing the planning and regulatory system for councils, and interjurisdictional fisheries which, at least in the context of the Magnuson Act, I believe, is a new issue. First, I would like to put forth some concepts, which I think are important even though we hear a great deal of criticism of the council system. The council system as it is structured today is the best system to manage fisheries. It has warts. It clearly needs fixed. There are problems with it, but no one has come up with an alternative that is better than the council system. Its pluses are that it is inclusive, it is open. You can't get a more open process than the Fishery Management Council system. It is deliberative. In fact, that may be one of its faults, and I think its most significant feature is it is regional. There are solutions that will work in Long Island that will not work in Georgia and will not work on the West Coast. You have got to manage fisheries regionally.

So if there are good things about the council system, why are people here to complain? Why are people saying it is broke? I think

there are three basic reasons for that. The members are viewed as representing a specific interest. This is not a question of conflicts of interest. This is a question of what interests do they represent. In the Gulf of Mexico, we have often heard people come in and say, "The problem with the Gulf Council is there are too many recreational fishermen on it."

The perception is that there are lots of recreational fishermen on the Gulf Council. In fact, that perception is wrong. The real problem is not that the perception exists, it exists because there is a statute that basically picks you because you are a recreational fisherman. The statute itself creates the structural problem that we have got. The secondary problem, which I think is a significant problem, which lots of people have addressed, is that there are conflicts—clear conflicts of interest on Fishery Management Councils. I will get to the solution for that in a minute.

The second reason that the councils are under duress is that the agency, the National Marine Fisheries Service, tends to play politics with Fishery Management Councils. They take credit for the good stuff, and they blame the councils for the bad stuff. So who comes here to see you? The people that are complaining. They are either complaining about the way the council did it or arguing that you ought to endorse the council. But either way, people tend to focus in on Fishery Management Councils as the place where the controversy is.

Lastly, the science itself that they are managing with—Fishery Management Councils and the National Marine Fisheries Service—is not fabulous science. I will let Paul Brouha and others defend the scientists, but the science here is basically weak. What we do in fisheries management is we manage to the weak link. We sit there and say, "If we don't know, let us exploit it till we have a problem." That is a fundamental problem in this statute. What we should be saying is, "We don't know. We should be conservative, and, therefore, we preserve our options as we go along." Now, that is easy for me to say today, but that is something we should have done in 1976. It is sort of what gets us into the 43 overfished fisheries. But clearly that is an ethic that belongs inside of this statute.

Let me talk about some specific changes which I think are necessary to this statute, the first of which is conflicts of interest. I have been quoted—I think one of your questions was directed to Norville Prosser, but since I am the source of it, I will hit it directly. I do not believe that any association director, lawyer, lobbyist, or anyone who is essentially paid for their point of view belongs on a Fishery Management Council. It is that simple. They are not there independently. I don't care how knowledgeable they are. They are there being paid to represent a specific point of view. I would take them off Fishery Management Councils.

The second thing that I would do is with respect to voting. I would ensure that an individual who is voting on a council who has got clear knowledge votes only on those issues in which they do not have a specific financial interest. That is not much to ask. I think it is pretty straightforward. Now, I realize there are lots of exceptions to that rule, and people will come up with lots of reasons why State directors should not make all the management decisions, but

I think members with direct financial interests are people that shouldn't vote when they can benefit from the vote.

I would put in a post-employment conflict bar to ensure that five years after somebody leaves the Fishery Management Council they cannot appear before the National Marine Fisheries Service or any council. If you do that, you are going to restore credibility in the council.

Let me get to the issue of splitting this business of management and planning. I believe that the biggest problem in Fishery Management Councils is that they are forced at the moment to do the regulatory decision and the long-term planning decision in the same document, at the same time, with the same people. So what they get barraged with is little issues. It is a little bit like deciding whether you ought to solve the budget deficit by sitting here determining whether every program that comes to you is a good program or a bad program. It is impossible to do that. You need a long-term plan. The council needs the ability to do long-term planning.

Last, just 30 seconds here on interjurisdictional fisheries, if I could. The question of the visibility of landing laws in every State is a significant question: The effect of landing law on a federally caught fish was not definitively addressed in the Magnuson Act. It is an issue that has arisen in the South. It is going to arise in California, and it will arise in every State in this country unless we go ahead and clearly define the interrelationship between Federal jurisdiction and State jurisdiction to ensure that the conservation measures that are jointly put in place can be effectively enforced. Thank you, Mr. Chairman.

[The prepared statement of Mr. Hayes can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Hayes. The last witness for this panel is Joe Blum, Executive Director, American Factory Trawler Association.

#### STATEMENT OF JOSEPH BLUM, EXECUTIVE DIRECTOR, AMERICAN FACTORY TRAWLER ASSOCIATION

Mr. BLUM. Thank you, Mr. Chairman. For the record, I am Joe Blum, Executive Director of the American Factory Trawler Association. We very much appreciate the opportunity to have been invited to speak with you folks today.

AFTA is a trade association made up of 18-member companies that operate 44 vessels that catch and process fish at sea. We exist, Mr. Chairman and members of the Committee, because of the Magnuson Act. The Magnuson Act, as one of its initial thrusts, encouraged American catchers and processors to develop technology to replace the foreign catchers and processors that were operating off of our shores. We met that challenge, Mr. Chairman, and the American Factory Trawler Association and its member companies were born.

We also, Mr. Chairman, have just gone through about two and a half to three years of allocative decisions made by the North Pacific Fisheries Management Council and the Pacific Fisheries Management Council that I think would make excellent case studies of

the Magnuson Act and what needs to be addressed. And before I go into any detail on that, I would like to suggest that what we are in now is the post-Americanization period of the Magnuson Act. The Magnuson Act has been extremely successful in its initial charge and that is to replace foreign fishing with American fishing. The council's structure has been extremely successful in doing that.

The last two and a half to three years of allocative decisions is a signal that we need a comprehensive review and re-evaluation of how we are going to do business now that the foreign issue is no longer the issue. The issue is conservation, management, and allocation. Early on when first passed, the councils were primarily advisory to the Secretary of Commerce. During the early and mid-1980's, that role was reversed. The Secretary became review to the councils. The councils, under directives from Congress, became the decisionmakers. The Secretary's hands were tied as to what type of action could be taken after a council action had been taken.

Two things didn't change in that timeframe that kept pace between the councils and the Secretary. With the decisionmaking authority now put in the hands of the councils, with Congress having instructed the Secretary and the governors of the various States that nominate the people to councils, to pick people that were involved in the industry, you have de facto created a conflict of interest. That conflict did not exist when the councils were advisory. You want people knowledgeable involved in the industry advising decisionmakers.

One of the very, very creative things in the Magnuson Act was the country recognized that it would be extremely difficult to sit here in Washington and manage fisheries all around the country without having the knowledge of the folks involved in those fisheries and the State folks involved in the management of those fisheries would have. And so they created the council system.

When the role of the Secretary and the council switched and the change was not made as to who is on those councils, you have a situation like we have in the North Pacific where the Chairman of the council is the paid lobbyist for a particular association, and there are others including Factory Trawler representatives on the council that have a direct financial involvement in the decisions. And with the Secretary not being able to modify decisions in the way that a decisionmaker would modify decisions, you have, as I have suggested, created a conflict of interest.

So in the post-Americanization era, what should we do? What I would suggest that the Congress do is first of all what you are doing now and that is take a real hard look at what is going on within the system. I would like to see you and the American Factory Trawler Association would like to see you put the authority back in the Secretary to make the decisions; have the councils be advisory; have the decisions be based on the best available information; have the decisions be based on the preponderance of the evidence, not simply the fact that one thing exists or doesn't exist, but that the record show that the decision that was made is the best decision available.

Skipping quickly because the yellow light is on, one of the issues that the Congress needs to deal with and that we wholeheartedly urge the Congress to deal with is the issue of waste discards, by-

catch, whatever name you want to put on it. That is a very troublesome situation and one in which we all need to work for a better solution. In our view, a better solution to that is something like in our fishery individual transferable quotas. Individual transferable quotas put accountability where accountability ought to be and that is on the fleet involved in the fishery. And when you are operating a fishery in a business-like way, you can deal with issues like bycatch, and you can provide a quality product in the marketplace. Thank you, Mr. Chairman. I have, as you know, testimony that is longer than that and is in the record, and I will now make myself available for questions.

Mr. MANTON. Your timing was exquisite, and your full statement will be in the record without objection.

[The prepared statement of Mr. Blum can be found at the end of the hearings.]

Mr. MANTON. At this point, I invite members of the Committee to put questions to the panel. I will begin by asking if indeed a large percent of 153 specie groups are overfished, does this indicate a conservation problem, and, if so, how do we address this problem? Mr. Gutting.

Mr. GUTTING. Mr. Chairman, yes, there is a conservation problem, but I would ask you to consider two things. One is history, and the other is the experience of other nations around the rest of the planet. If you go back and read the congressional record of this Committee in the 1970's, you will see listed out a long litany of conservation concerns within our fisheries. If you go back to the 1870's, you will find the same thing. The debates in Congress about the need for conservation that were going on in 1872 sound remarkably like the ones going on today. So, yes, of course, there are conservation concerns, but there have been always conservation concerns.

And the second thing I would ask you to bear in mind was alluded to by one of the other witnesses and that is you can go around the world and look at every imaginable governmental structure and fishery management system, whether they are ministerial, dictatorial, democratic, regional, national, whatever, they are all facing serious conservation problems. Yes, there are conservation problems, but the answer isn't necessarily throwing out your management system. I suspect that the problem is a lot more complicated and has to do with our poor science, our lack of understanding, environmental changes, a whole raft of things that you can't change by just changing a law.

Mr. MANTON. Mr. Hayes.

Mr. HAYES. I would submit that the real problem is the underlying ethic. Today the ethic is to go out and go fishing, and when we create a problem, then we go out to conserve. There is not very much conservatism in the way in which we manage fisheries whether we have the knowledge or we don't have the knowledge. I think the classic case, in my view, is the Northwest salmon fishery. We probably know more about the Northwest salmon fishery than any fishery in the United States. If anyone here could say that that is in good shape, I would like to hear that statement. The problem is the way we do it. We ought to conserve first and allow exploitation be it recreational, commercial, or whatever second.



Mr. MANTON. I don't see any other members of the panel wanting to tackle that question at this time, so I will open up the discussion to the other members of the Committee. The Chair recognizes the gentleman from Alaska.

Mr. YOUNG. Mr. Chairman, I want to make sure when you say Northwest, Mr. Hayes, that you are not including Alaska. Our species are in good shape. If we could keep some of my good friends from down south of Ketchikan out of our fisheries, I think we would be in much better shape, including our Canadian neighbors which we have not cranked into this little formula yet. I can get into that a little later. Our good neighbors are not always our best friends. Sometimes they take advantage of a lack of science.

And may I compliment the panel—I think every one of you stressed a point. If anything we fail—and I am the only seated member on this subcommittee that worked on the original Magnuson Act—I do think it originated out of Alaska. We did prevail, and you are right in why it was created. But we did not finance it well enough in the scientific end of it, and we base our science decisions on poor science—in-house in actually saying what you are being paid for to say. And that is probably the greatest weakness we have in this legislation. We hope to address that as time goes by.

I have a question for Joe, you know. The factory trawler is always one of our favorite issues. But based on your testimony, Joe, and it was good testimony, I assume you support last week's Secretarial decision of Pacific whiting. Do you agree that the effect of what happened was a council proposal being replaced by a new allocation formula devised by the Secretary?

Mr. BLUM. Mr. Chairman, we certainly support the Secretary's decision of last week which decision is basically based on recommendations that were supported by the staff within the National Marine Fisheries Service—was available information to the council. The council chose a different tack, and we certainly support the decision that the Secretary made.

Mr. YOUNG. So you are supporting a new allocation formula then; otherwise, you want to disregard the council and really put into a fish czar being the Secretary? The council would be totally advisory, and the Congress in 1982 made them more than advisory. Is that correct?

Mr. BLUM. Mr. Chairman, yes. In 1982, the councils became the decisionmaker, very much limited the authority—congressional action very much limited the authority of the Secretary, and I suggested in my testimony and would in response to Mr. Young that that was fine at that time. We were dealing with a situation in which we were trying to remove folks from the fisheries so that Americans could take advantage of that resource. Now we are at a point where we are allocating between competing interests that are often sitting on that council, and we believe that the Secretary—and as I suggested in the written testimony, a review body reviewing what the Secretary and the council do is a better way to do it in the post-Americanization era.

Mr. YOUNG. OK. What I am suggesting also though, Joe, the Act is very clear now. Is that correct? In other words, if the Secretary considers a council plan or a council proposal implementing a framework plan, can the Secretary set aside a council's proposal

and establish his own plan under the Act as established by this Congress in 1982?

Mr. BLUM. Mr. Chairman, the Secretary can reject a plan in part or in whole and return it to the councils.

Mr. YOUNG. In this case, he did not—

Mr. BLUM. My understanding in the whiting case, one of the provisions that the council presented to the Secretary was the 30,000 metric ton reserve, and what the Secretary did was say, "I accept that portion of the plan. I reject the remainder of the plan."

Mr. YOUNG. And again though, Joe, he substituted a whole new plan—a whole new allocation system which goes against the Act. And by the way, he is not through with this yet, and this is outside of my ballpark. He is going against the intent of this Committee. He does not have that authority. Now, what you have suggested, the changing of the Act can be done by this Committee, but the Secretary himself cannot do it. And if I was one of those individuals in the State of Oregon, I would have a suit right now stopping this because he does not have that authority. Now, that is probably what will happen. I am sure there are enough lawyers in this room to pick up on that real quick, but, you know—

Mr. BLUM. Mr. Chairman, let the record show I did not turn on the caution light.

Mr. YOUNG. Pardon?

Mr. BLUM. I did not turn on the caution light.

Mr. YOUNG. I know. But, Mr. Chairman, again, my interest in—and, Joe, you know I have had my differences with the factory trawling fleet because I honestly believe until we have the scientific information that the driving force behind your fleet is not the sustained yield, and it says that very clearly in the Act, of the species, the driving force is a monetary award. I don't blame you for that, and our interest in Alaska is to make sure the species are sustainable, and it is up to you—and you said it in your testimony—to have good scientific information. All of you agreed to that.

Now, that means all of us are going to pay for it. We have to have it because these are our seas. Now, if I had my way, it would just belong to Alaska. I will tell you that right up front. You know, we would like to secede and control it and have our own submarine fleet, and we will take care of all of you, but we are not going to do that. We are trying to work out a solution to the problem which I think each one of you faced here—a problem we have to take care of, and I think we will do—

Mr. MANTON. The gentleman's time has expired.

Mr. BLUM. Mr. Chairman, may I very briefly? Please?

Mr. MANTON. Go ahead, Mr. Blum.

Mr. BLUM. I agree, Mr. Chairman, that good science is the foundation, and I believe in the North Pacific Council good science has been the foundation. As a matter of fact, as this Committee, I hope, is aware, we have on factory trawling vessels—100 percent of our vessels have federally trained observers to monitor our harvest. Our harvest is the most monitored harvest probably in the nation. We are operating on good science. It does not do us one whit of good if we eliminate the resource. That is our raw material in a business sense. We also care about it because it is a part of an eco-



system that we work in, but we are not out to destroy the resource. We are out to work with the resource for the good of the nation.

Mr. YOUNG. Will the gentleman just yield for one comment? My concern, Joe, as you know, is the bycatch, and you mentioned that. Now, when you drag and catch 28,000 king salmon in a pollock drag that affect the people that I represent, that disturbs me, and it ought to disturb you, and that could have been avoided. And if you are not avoiding that, and I have talked to your group many times in my office trying to take and improve your activities, and if I can't see some improvement, this Committee is going to improve it for you.

Now, I will guarantee you I have got enough people out here on the side of the sport fishermen, I have got enough people on the side of the conservationists in the greenie group to make life miserable for you if you don't, in fact, improve your efforts. Now, I am not saying you haven't, but we need further improvement—just a little shot across that big bow of yours, is that right?

Mr. MANTON. The gentleman's time has expired once again. We don't want to cut off debate, but there are other members that have other questions. The gentlewoman from Washington, Mrs. Unsoeld.

Mrs. UNSOELD. Thank you, Mr. Chairman. A Regional Fishery Management Council member recently was quoted as saying, "The council politics are so blatant it forces you as a protective measure to become part of the problem. It is a corrupting process. I shouldn't even be on the council making these kinds of decisions that I have conflict on. I think it is true of every member of the council. It should be in the hands of professional managers." As industry representatives, how do you all respond? Is this simply a consequence of putting knowledgeable and experienced private citizens on the councils in charge of making the management decisions?

Mr. BLUM. Mr. Chairman, may I respond?

Mr. MANTON. Yes.

Mr. BLUM. In my belief and belief of AFTA, the gentleman that made that statement is correct. The system needs to be revised as to who, not by name, but type of interests that should be on the councils. They should be required to have full documentation of their financial investments in fishing. They should be held to the same kinds of ethical standards as people who are appointed to presidential commissions are held to and fill out the documentation, and the councils need to be held accountable for their decisions. Right now with the division of labor, if you will, between the councils and the Secretary, there is no accountability. The system has to have accountability, and so I agree with the statement and believe that it is correctable by this Committee and by the Congress by addressing the conflict of interest.

Mrs. UNSOELD. Anyone else on the panel? Yes, Mr. Gutting.

Mr. GUTTING. Thank you. I emphasized this as a concern, and I can assure you that it is a widespread concern among our members. I think it would be a grave mistake of this Committee, however, to abandon the idea that members of the councils should be knowledgeable and experienced. I think it also would be a mistake to abandon the idea that the people involved in the fisheries should

not be on the council. I think one of the great strengths of the council system is that by involving the people with a stake in the decisionmaking that you build the kind of consensus that you need to have for effective management. There are more than 100,000 fishing vessels. You can't put a cop on every boat. If you are going to have effective management, you must have people supporting the system, and one way to help build support is to involve them. Now, that does not mean, as I say, that you shouldn't be deeply concerned about conflicts of interest.

There is a range of options for the Committee to consider, and I would just urge that you look at that range of options to try to address the problem. You don't necessarily have to go to extremes is what I am saying.

Mrs. UNSOELD. Well, how would you respond to the suggestion of Mr. Blum that the councils' opinion should be more advisory and that the Secretary should play a much larger role?

Mr. GUTTING. Over the years the Act really has not changed in any basic way that addresses the relative authority of the Secretary versus the councils. It is really a matter of leadership and administrative policy. If the Administration wishes to assert itself, there are ample ways that it can do so within the current system. If the Administration wants to back away from a leadership role and try to point the finger and say, "Those people are the ones in charge, and they are to be blamed," and not stand up and assume responsibility, then, yes, that can happen. What I am saying is that within the current system, there is the ability to address the problem. I don't think you need to go to the extent that is being suggested here and make a change in the Act. I think a lot depends on how the new Administration wishes to assume its responsibilities, whether it wishes to be aggressive and take a leadership role and stand up and be accountable or not.

Mrs. UNSOELD. Yes.

Ms. IUDICELLO. Thank you, Mr. Chairman. I think we are missing yet another opportunity here. I do not represent an industry, do not represent any user groups, and I think that the Act provides the possibility—the authority to appoint people to councils who are not necessarily users of the resource. And I think in keeping with what Mr. Merculieff was saying and some others were saying in terms of the precautionary principle and changing the ethic and looking at the larger ecosystem, the kind of knowledge and experience that you might want to have on a council does not necessarily have to come from catching fish. And there is a perspective that could be used successfully in our view to look at these larger ecological issues, and so we would urge the Committee to strengthen the language in the Act that makes it possible to put in environmental interests on the councils. We would like to see a mandatory nonuser seat on the councils.

Mr. MANTON. Does the gentleman from South Carolina have a question?

Mr. RAVENEL. Mr. Hayes, we have got, you know, a local South Carolina unit of your, and I am to those folks. And, of course, their principal concern is bycatch. What kind of progress are you all making down on the Gulf Coast in solving that problem?

Mr. HAYES. The shrimp bycatch issue is something that the Gulf Council and the regional office of the National Marine Fisheries Service has looked at jointly with a task force which one of our members from South Carolina is on, and one of our members from Alabama is on. I believe the Center for Marine Conservation and others are on it.

It is our belief that what happened in 1990 was Congress put an absolute bar in the statute that prohibited the Gulf Fishery Management Council from managing bycatch. That was done, I believe, with the full understanding that the Gulf Council had already agreed with the shrimp industry that they were going to do that. That agreement no longer exists. There is information available that would allow us to go ahead and make some steps toward managing bycatch in the shrimp fishery. There are time and area closures that people are talking about.

What we would propose is that when that particular exemption expires, which it will——

Mr. RAVENEL. Wasn't that a three-year exemption?

Mr. HAYES. Correct. We would propose that it be taken off, that it be allowed to expire. Don't re-enact it, and then let the cooperative effort continue between the recreational community, the environmental community, and the commercial community and give the Gulf Council the opportunity to go ahead and manage this fishery. I think you would find in the Gulf of Mexico the red snapper problem would be a little easier to handle if you didn't have that particular prohibition.

Mr. RAVENEL. I think here is a gentleman to respond to that too.

Mr. GUTTING. Yes. I totally disagree. There were two problems that needed cooperative research. One had to do with what the catches were, where they were occurring, what depth, what time, and that work has proceeded. This work actually really only got underway last year. We think we need another year to get the kind of data needed to really have an understanding of the seasonality down there.

One of the problems we had is when we first got into the sampling program we thought we needed fewer samples. But the scientists told us that to be statistically valid, to be sure, we needed to take a lot more samples than we had originally calculated, and that is the reason for the delay. Now, the second half of this research program had to do with gear. Here we have not moved ahead as quickly as we have on the basic catch data.

There are two very exciting and potentially promising strategies. One is to use the so-called fish eyes, and the other is to use the so-called snake eyes. We have just recently in the last few months begun to position these devices on the nets and to test them. But we have a long way to go, and we are not at all confident that we have found a solution. And on red snapper, red snapper was the motivating factor here. Those little devils just—they just won't get out of the net. The snake eyes and the fish eyes work great on a lot of other species, but the red snapper just hover right there in the net, and they just won't get out of these devices. So I think we need some more work on gear.

Going back to the command-and-control regulatory we-are-in-charge attitude, which prevailed three years ago, would be a grave

mistake. We are working cooperatively together. Industry is involved. We have a lot of volunteers, and we have a lot of financial commitment on the part of the industry, and that is because we have set up a cooperative program. If we go back to cops and robbers, we are going to lose that. I think when the Congress acted in 1990, it set up the environment that allowed us to work constructively. We are making progress, but I disagree. We are not there yet.

Mr. RAVENEL. Yes. Well, I would say to you, sir, you know that a number of years ago when we had the problems with the sea turtles, and, you know, there was a great reluctance on the part of the industry to employ the TEDS, and it was not really until the laws were enacted and those of us who helped to pass them insisted on their enforcement that it began to be used and with great success. And now on the southeast coast which I represent—I see you shake your head, sir, but you think you had problems with the turtle huggers and the turtle and whale lovers like me, you start running into the sport fishermen. For every one of them, there are probably 50 sport fishermen. You know, you are going to really encounter some terrible problems so I would urge you that whatever technology that you folks say you are developing, you need to move rapidly forward on it. Bycatch is a burning issue in my area and now that we have, you know, effected the good compliance with the TEDS which are working very successfully.

Mr. GUTTING. If I may please respond?

Mr. MANTON. Yes.

Mr. GUTTING. There are two circumstances that are different when it comes to finfish bycatch and turtles. The industry may have acted like a mule. We got hit on the head. You got our attention. We have learned a lot as a result of our experience with turtles. That is changed circumstance number 1.

Changed circumstance number 2, and why finfish is different is that there are a lot of fishermen out there who would like to catch some of the finfish that are being caught up in the nets so we have an economic motivation within our industry to find a solution, that what we are doing here is protecting our future catch. So there are some aspects that are different, and there is a difference in attitude, and I don't think it is fair to draw an analogy between the two problems.

Mr. MANTON. The gentleman's time has expired. The Chair will recognize the gentleman from Mississippi, Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. Mr. Chairman, I would like to begin by making a comment with regard to Mr. Ravenel's questions. Later on in this spring at the beginning of the shrimp trawling season in Mississippi, one of these State-owned research boats will be taking out one of our local bed manufacturers, someone who has been doing this for about 50 years who we think for about \$20,000 will solve the problem unlike TEDS that the taxpayers generously pumped about \$4 million into to find a lack of a solution. So we feel pretty good about that something will be resolved and all that, that everyone will be happy with using the expertise from the industry rather than some people who know nothing about net making.

My question to the panel, and I would like to open this up, and it is not just directed to you—it is almost to everyone who comes before this Committee—see an awful lot of people out there who say that the way to save the resource is the monitor and regulate the catch. Coming from a timber-growing region, I would have to disagree. If we only monitored and limited the number of trees cut, we would not have any trees in the future, quite honestly, because if it wasn't for the attitude that we are going to come up with faster-growing trees, that we are going to monitor the growth, we are going to fertilize, we are going to do all those things to get us more trees—what is your group doing to, in effect, enhance the resource rather than just count the number of fish out there and limit the catch? Yes, sir.

Mr. HAYES. The Coastal Conservation Association in Texas now runs two redfish hatcheries, and I understand from Texas Parks and Wildlife—we could get that checked out—but both of those redfish hatcheries may amount to as much as 10 or 15 percent of the resource. We have patterned it on what is going on in the Northwest in the salmon fishery, and it has been very, very effective. CCA has gone out and invested its own money. It has matched that money with Wallop-Breaux money. They have gotten donations from Dow Chemical to run both of these facilities, and both of these facilities have been very, very effective. In fact, we would like to try it in Mississippi, but we haven't quite figured out a way to do it through.

Mr. TAYLOR. Yes, sir.

Mr. PROSSER. You mentioned briefly in passing the Wallop-Breaux Trust Fund. The sport fishing industry that I represent has been involved since 1951 in a Federal self-taxing program where they collect a 10 percent manufacturer's excise tax on their products. That, along with Federal fuel tax purchased by boaters in the recreational fishing community, contribute \$200 million to this nation annually. That money is all earmarked specifically for fishery management, research, and monitoring. A large part of that money goes in the coastal States. Each coastal State must divide that money equitably between salt water projects and freshwater projects so the industry, through the excise tax we now know as the Wallop-Breaux Trust Fund, contribute very dramatically to fishery research, management and enhancement programs of this nation.

Mr. TAYLOR. Yes, sir.

Mr. BLUM. Thank you. We assess members of our association 75 cents a ton on all groundfish caught in the Bering Sea and the Gulf of Alaska that goes into a fisheries foundation in Alaska to be used for projects as the local residents want to use them. Some are for business development projects associated with fishing, but we do not limit it to that. It can be used for enhancement habitat studies or whatever needs to be done. In addition, we, along with other members of the Pacific Northwest groundfish fishery, have contributed to a consortium of universities to do marine mammal research to get a handle on what is going on in the interaction between fishing activity and marine mammals. We don't do marine mammal enhancement, as you can understand, but to get an understanding of what the relationship is so that we can make corrective action if,

in fact, fishing is having an impact on marine mammals. That is two of the things that we have done along with other members of the industry.

Mr. TAYLOR. I guess to ask a specific question, I know of a private group in my home State that with their own funds purchases old ships, old cars, goes out and goes through the process of having sites permitted and builds reefs under the idea that if you have more reefs, you can have more fish which I happen to subscribe to. There are other groups—Chevron USA is actively involved in creating coastal marshes with dredge spoils on their water bottoms that they lease. I was just wondering what sort of activities along these lines is your organization getting involved in. I mean, we are hearing about the assessment about fees, but I really think most of the money is going toward counting fish rather than enhancing the resource. Yes, sir, please.

Mr. GUTTING. I think the answer for the commercial industry really is to be found at the local and regional level. There are several commercial organizations which tax themselves, in essence, to fund hatchery programs on the West Coast, as an example. To get a comprehensive answer to your question, we would have to survey groups around the country. There are 150 organizations in the commercial industry. Each has its own programs, initiatives, and priorities. There is no simple answer, I guess, from our perspective other than an assurance that depending on the problem and the circumstance, the nature of the waters, the nature of the resources, that the fishermen are contributing and putting back into the resource, and some of these projects, not all, but some of these projects do involve the actual generation of additional fish.

Mr. MANTON. The gentleman's time has expired. Does the gentleman from Georgia—

Mr. KINGSTON. Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes the gentleman from Georgia.

Mr. KINGSTON. First of all, I want to thank all of you for your good testimony. It is obvious that each one of you loves fish in your own way in the way you see the conservation. Now, with that I must say something that is a little bit critical on this discussion of conflict of interest. There is a real elitist tone here that, "Well, you know, my group is not a conflict, but these other folks are." Everybody has a right to this valuable resource, and you feel that way or you wouldn't be there, and, Mr. Hayes, I am going to pick on you a little bit. You look like the seasoned pro and I am not, but I am a member of the ACCA so I am going to choose you. But to say in here stop worrying about balance, yet at the same time if somebody is an environmental advocate and they are paid to do the job, that is a conflict. You know, their compensation is determined on it, and under the guidelines described on page 10, it would appear that no one would have the right to participate in this argument.

I think that just listening to the six of you all today you could see that we need that balance because each one of you comes from such a refreshingly different perspective I think that balance and that different perspective is the right approach. And it makes me more determined to keep the conflict—you know, the reason why we have three branches of government is to keep the conflict going

as a built-in safety factor so let me give you a chance to speak if you want to comment.

Mr. HAYES. Let me talk a little bit about my comment that said stop worrying about balance. What this Committee has done and what the Congress has done is amend that particular section of this statute at least five times that I can think of. We require reports, we require identification, we require a lot of things in order to preserve "the balance between recreational and commercial fishing."

My view is that we ought to stop categorizing people. First of all, when you put people on Fishery Management Councils, they ought to be Federal officials. They ought to be representing the public interest. I would argue for an inclusive arrangement in which lots of different interests get represented. Personally, I am opposed to specific environmental seats for nonusers being put on a council because I don't think we ought to designate seats on councils. I think we ought to give the discretion to the Secretary of Commerce. The Secretary of Commerce ought to be required to make sure that the council, as Bill Clinton says, looks like America, and that we have lots of different, all-inclusive interests on Fishery Management Councils.

Mr. KINGSTON. OK. One other thing—two other things actually. In the State Department of Natural Resources and Fish and Game Departments and so forth, surely there is some overlap between what goes on with the councils and what goes on in individual States. Now, I know that the councils are supposed to have the overlap and more coordination and a big picture—a bigger mission statement, but it appears that there must be some overlap that is causing the waste of resources. Do you have any recommendations—all these testimonies—they don't approach that subject, but in the interest of saving money, I know that during the last decade the States have grown. Any comments on that? Any suggestions that—

Mr. HAYES. Actually, I dealt with that in the interjurisdictional part of my testimony. My view is that you have to have comprehensive management. None of these systems stand alone. Georgia is an excellent example. Managing the territorial sea of Georgia without worrying about what was happening in the Federal waters or South Carolina or Florida would be ludicrous. We need a coordinated Federal management system. My belief is that the Fishery Management Councils are the best place to do that, and that is where the planning emphasis ought to be. Then what we ought to do is require the Federal Government to implement regulations where they can and States to implement regulations where they can so that we get cooperative management. I think we could reduce a great deal of duplication in the States by coordinating the science, the basic planning process implementation of management and management philosophy.

Mr. KINGSTON. One other question for Mr. Prosser. I am also a member of a sport fishing club, and one thing that I don't see in many sport fishing club bylaws is that memberships will stick to creel limits and catches and so forth, and maybe you could recommend that to some of the sport fishing clubs that you represent, that they voluntarily put, "All members will abide by creel limits," because I know it is not so common anymore, but about 10 years



ago people, "Oh yeah, man. We were slaughtering them. We got into a school," and, you know, it is a real big deal. But your own members could do that.

Mr. PROSSER. Well, sir, I couldn't agree with you more, and the industry I represent understands that as a former President said, "We have to be kinder and gentler" in the way we use this resource. As more and more of us go afield to split up that fairly non-changing supply of fish, they are going to have to do a better job of how they treat that resource. It is a renewable resource. Our organization and the industry has promulgated and very aggressively marketed an ethics code. This is 10 points of how a proper steward, an individual angler, should behave when afield. And catch and release is a very real part of that, as well as how he treats private lands. There is a whole series of things so we agree with you, and we are working hard on that.

Mr. MANTON. The gentleman's time has expired. The Chair recognizes Mr. Lancaster from North Carolina.

Mr. LANCASTER. Thank you, Mr. Chairman, and thank you, members of the panel. I would like to ask a corollary question, a question that for conservationists on the panel will take one approach but for commercial fishermen will take another, and that is first of all how can commercial fishing survive as an industry and still conserve the resource? And the corollary is how can we conserve—this is for the commercial fishermen—how can we conserve but yet you survive as an industry? It appears to me that that is the real crux of this entire legislation, and I hear too much from both sides of this issue that only their side is right, that you can't do one and also have the other. There is bound to be a way in this society of ours that we can, in fact, maintain a healthy commercial fishing industry and still conserve the resource for sport fishermen and vice versa. And I would like for each of you to respond if you would.

Ms. IUDICELLO. Thank you. From the conservationists' perspective, and this isn't even from the recreational or sports side of it, but just from—

Mr. LANCASTER. Well, to be honest, ma'am, I really want to hear from them, not just conservation. I want to hear from the commercial fishermen saying how they can survive and still protect the resource and from the sport fishermen how they are going to keep from putting commercial fishing out of business.

Ms. IUDICELLO. Oh, you are talking about that balance.

Mr. LANCASTER. And you who come from a very specific—which is only conservation without regard to either of these industries' survival—I would really rather hear from the others.

Ms. IUDICELLO. Fine.

Mr. BLUM. Thank you, Mr. Chairman. Good science, managers allowed to manage, the ethic that Bob has talked about is the place that you start. And then, in my view, you take a hard look at what is the management system that gives the best reward for the Nation for good conservation and providing a product to the consumer. And, in our view, individual transferable quotas for our fishery works as the potential for working the best. It puts accountability on the folks driving the boats, catching the fish, processing the fish, and marketing the fish. Government stays in the process



by doing the science, telling the fleet what the amount of catch can be each year. You know what your percentage of that is, and you can go about it in a business-like way. You are not out there rushing to get fish before Bob gets fish. You get your own fish in your own time, and conservation and fisheries can co-exist and have to co-exist very, very nicely.

We would like to see the Magnuson Act give strong encouragement to the Secretary from the top down and to the councils from the bottom up to get on with taking a look at the very issue you are looking at and see what system best works for their fishery.

Mr. MANTON. I am going to have to remind everyone that we have a vote. In fact, there are two votes—a 15 minute vote, of which I think there is about five minutes left, followed by a five-minute vote. We will go vote, and when we return we can hear the rest of the answer to Mr. Lancaster's question. Mr. Hamburg, you are, of course, welcome to participate as well.

[Recess.]

Mr. MANTON. We will reconvene our meeting where we left off. Mr. Lancaster had put a question to the panel, and we will pick it up from there.

Mr. HAYES. I think the question we were responding to was essentially how do you conserve the fishery and at the same time ensure there is a viable commercial fishing industry. I think Joe Blum actually has struck upon the answer. Without conservation of the fishery, you cannot have a viable commercial fishery. You can't have a viable recreational fishery. A lot of people in the commercial fishing industry, frankly, don't like regulation. And the difficulty here is providing in this system the kind of integrity and the kind of confidence that you need in a management system that will allow commercial fishermen to think they are part of the process and that the solution is going to do them some good.

I want to clarify one thing which we have given testimony for years on. The objective of recreational fishermen and the Coastal Conservation Association, in particular, is not to put commercial fishermen out of business. Our objective is to ensure that there is good, sound conservation, that the institutions that conserve the resource are well-funded and well-intended and that they conserve the resource. That really is what our objective is. If we could find fisheries in which we can have compatible recreational and commercial fisheries, all the better.

Mr. PROSSER. You know, it is a privilege of each U.S. citizen to participate in these fisheries. It is not a right. It is not a right of the recreationals, not a right of the commercial industry. It is a privilege. It is a renewable natural resource. This nation and its management fraternity have been able to develop management strategies for renewable natural resources all across the landscape. There is no reason that the management personnel managing our marine fisheries are less capable in terms of their ability to identify what the allowable harvestable limits are and then stick to that so that we don't overexploit, no matter who is taking the fish. Thereby, those populations are going to rebound. There are going to be more fish for everybody to take.

We then must rely upon the Fishery Management Councils to make informed decisions, as required by the statute, to maximum

benefits—social and economic benefits to the Nation from those resources. There could be some cases, Congressman, where to maximum the social and economic benefits to the Nation that not everyone will have, in perpetuity, access to every fish stock. That is certainly possible. So I can't sit here and tell you that over decades we will not have to make hard allocation decisions and not everyone will have access to all stocks in the future. But, first, let us restore the stocks to a reasonable level of abundance so that everyone can have a greater share at least initially. Thank you.

Mr. GUTTING. I wish I had a simple answer to your question. It is a very difficult one. To brush it off, I could say of course we have to have conservation. Without conservation, without the resources, we wouldn't have an industry. That is just too simple. And I certainly agree with Bob Hayes that one element of the solution has got to be confidence that if you are asked to make sacrifices that ultimately the benefits will be there for you, and I am not sure that has always been the case. But this alone is not sufficient.

I am very troubled about one situation that we get ourselves into and that is rebuilding depressed fisheries. This is where it becomes extremely difficult to actually effect conservation. Where stocks are depressed, you really have got to forego economic activity or livelihood over a long period of time. It is like protecting spotted owls from loggers. I don't think we have an answer there.

The fact of the matter is the political equation is so difficult in these situations that our governmental structures seem to be paralyzed. And I think we are groping as a nation for what to do about that circumstance. The fishing that comes to my mind is the New England groundfish fishery which needs to be rebuilt and which is the economic lifeline of so many families. And I just don't know that our fishery managers really are adequately equipped to deal with it, and I don't have a simple solution for you.

Mr. MERCULIEFF. I am a commercial fishermen myself, and I come from a community that is dependent upon the commercial fisheries. And as a commercial fisherman, I like it where we say, "Yes. Let us fish." And I totally agree with this gentleman here, that the answers are not simple. We do have to allow conservation to develop, and the question is the process that we use. And that is where I believe that this Committee should be focused in on. There are processes we can examine and lessons that can be learned from the mistakes of the past.

Mr. MANTON. The gentleman's time has expired. The Chair recognizes the gentleman from California, Mr. Hamburg.

Mr. HAMBURG. Thank you, Mr. Chairman. In my very brief time as a Member of Congress and on this Committee, there have already been two occasions in which decisions made by the management council were very important to my district. And in both cases there—one case seems to be over. That is the whiting fish situation that, Mr. Blum, you are very familiar with, and in that case, the folks in my district seem to basically lose out. The smaller shore-based boats and industries seem to lose out to the trawlers.

The other situation has to do with the anadromous fishery, and several of you have mentioned the Pacific Northwest and the salmon problem. That is my district, fortunately and unfortunately, both, and a recent decision by the PFMC, as of yet, failed to

solve the problem that we have, and I think one of the reasons for that is the lack of representation of certain user groups on the PFMC. I think if their representation was broader, that maybe we would be closer to a decision than we are today. Where we are today is that it seems that we are heading toward a wreck between the Interior Department and the Commerce Department with the Justice Department playing a side role in this as well so I guess my feeling so far is that the management council at least that adjudicates the problems in my area is not working to my satisfaction. That was sort of my opening statement which I didn't get to give so maybe I will ask a question.

[Statement of Mr. Hamburg follows:]

STATEMENT OF HON. DAN HAMBURG, A U.S. REPRESENTATIVE FROM CALIFORNIA

Good afternoon, Mr. Chairman and colleagues. Reauthorization of the Magnuson Fishery Management and Conservation Act provides an opportunity for thorough analysis of the management process of our Nation's fisheries: a valuable resource susceptible to extinction without effective regulation.

I applaud the Magnuson Act's approach. Decision making at the regional level makes sense. Those directly involved in using the resource are attuned to complexities unlikely to be reflected in a remote process. I have serious questions, however, about whether local pressures are outweighing long-term considerations central to conservation of our fisheries in sustainable ecosystems.

In my district two management council decisions this year have already triggered significant controversy. The allocation of chinook salmon on the Klamath River left unresolved conflict between the Native American tribal river fishery, the ocean fishery, and the needs of the salmon population itself. We should scrutinize carefully the Act's decision-making process regarding anadromous fish.

The Council's other recent controversial decision attempted to resolve competition between large corporations' ocean trawlers and small, shore-based boats over whiting fish. The Council recommended a compromise multi-year framework to allow long-term predictable use, only to have the Secretary of Commerce reject the rule in the name of a purported national interest which favored the ocean trawlers. Evaluation of criteria justifying rejection of Council recommendations will clearly be important also.

As we consider the Act, we must also ensure that councils aggressively evaluate measures to reduce risk of extinction of fish populations. Are there steps that can be taken to make the entire process more accessible to public scrutiny and more comprehensible?

I will continue to focus on these and other considerations in order to ensure that this reauthorization of the Magnuson Act promotes the most effective possible stewardship of our fishery resources.

**Mr. HAMBURG.** In Mr. Prosser's testimony, he proposed that scientists decide on the allowable catch, and then the councils decide on the allocation of that scientifically arrived at number based on—well, that they then do the allocation after the science has been done. I would like to ask the other panel members what they think of that formulation.

**Mr. BLUM.** Mr. Chairman, we think the formulation where scientists set the amount of fish that you can catch each year and the council advise the Secretary on how it ought to be allocated with the Secretary having the final say is the logical, rational way to go.

**Ms. IUDICELLO.** I have got a slightly different spin on it. Thank you, Mr. Chairman. We think that the scientifically arrived at total allowable catch should be accountable with the Secretary; that is, he is the steward. That is where the buck stops. The TAC should be set by the Secretary and then the councils allocate it.

Mr. HAYES. I guess I have an unpopular spin, but the difficulty with having scientists decide what should be the total allowable catch is that this is a statute that at least as originally intended and written was intended to take in much more into consideration. All of the total factors in making those kinds of scientific judgments; that being the economic factors and social factors. Those are clearly elements of optimum yield.

If you were to take away from a Fishery Management Council the ability to address a multiple number of problems, you will make it so that the councils will become nothing more than an allocation mechanism. You will have deprived both the system and the Secretary of Commerce of the advice as to what levels are necessary. You will have taken economics out of the consideration. You will take environmental considerations out of the consideration. You will also make it a purely science-driven system.

I believe the councils ought to have the discretion to establish what optimum yields are about. When you establish an optimum yield, you ultimately come down to the total allowable take. I think there ought to be clear, defined guidelines from the Department of Commerce as to what overfishing is, what levels will constitute overfishing, and the Secretary of Commerce ought to be required to ensure when you put a plan in place whatever the take level is it won't promote overfishing. But the decision body ought to be the Fishery Management Council.

Mr. HAMBURG. Sir?

Mr. GUTTING. Life is not simple, and science is not free of policy, ethics, risk, and all kinds of societal judgments. The Ph.D. fishery biologists will come in and bedazzle you with equations. But buried in those equations are all kinds of assumptions, estimates, factors, and any number of different numbers behind which are judgments about what is good and what is bad. So, yes, let us leave science to the scientists, but let us be very, very careful that what scientists are doing is science and not policy because I think policy belongs in bodies like this one and the Fishery Management Councils. Policy should not be buried in the back rooms, in scientific computers, where it can lurk.

Mr. MANTON. The gentleman's time has expired. That concludes the work of panel number 1. We thank you all for your excellent testimony and your patience with our voting schedule. I would like to call up panel two; Jessica Smith, Director of Communications, Seafarers International Union; Paul Brouha, Executive Director, American Fisheries Society; Mike Nussman, Vice President, Government Affairs, American Fishing Tackle Manufacturers Association; Stephen Sloan, Vice Chairman, The Billfish Foundation; Jerry Leape, Legislative Director, Ocean Ecology, Greenpeace USA, representing the Marine Fish Conservation Network. As the panel is assembling, I would like to turn the Chair over to my colleague, Mr. Lancaster, for several minutes, and I will be back. Thank you.

Mr. LANCASTER. [presiding] Ms. Smith, you may proceed. Once again, without objection, the full statements will be admitted into the record, and I would encourage each of you, given the lateness of the hour, to be as brief as you might in summarizing your statement. Ms. Smith.

**STATEMENT OF JESSICA SMITH, DIRECTOR OF  
COMMUNICATIONS, SEAFARERS INTERNATIONAL UNION**

Ms. SMITH. Yes. On behalf of the Seafarers International Union, its affiliated fishermen and its fish-canning workers, some of whom are represented here who have traveled from New Jersey, Washington, and Alaska to participate in this hearing, I would like to thank you for inviting the opinion of the people who make a living, the people who are most closely linked to the sea and its marine life.

The fishermen and fish-canning workers that the SIU represents are the people who have most at stake in an effective conservation and management process. The fishery management process for these people is ineffective at best, or at worst it is driven by a hidden agenda to drive the independent commercial fishermen out of business. The independent small-scale fishermen, the family-oriented operation, is the backbone of the U.S. commercial fishing industry, and it is what makes up hundreds of coastal communities, and it is under attack from every end.

Small-scale fishermen are entangled in a web of hundreds of regulations. The regulations dictating what these fishermen may or may not do are often perverse, certainly irrational, and antithetical to the interests of the Magnuson Act. The people employed in shore-processing plants depend on the catch of the independent commercial fishermen and family-oriented fishing operations. These people too—their way of life, their employment is equally endangered by fisheries policies which wipe out the fleets of small fishing operations. The destruction of this kind of fishing tradition which has passed on from one generation to the other is not in the national interest, and it is up to Congress to refocus the Magnuson Act so it supports this way of life.

Contributing to the crisis are the Regional Fisheries Management Councils which, for the most part, completely disregard input from commercial fishermen as being anecdotal and not scientific, which engage in long and lengthy and undemocratic processes which don't allow for the necessary flexibility to make common sense decisions, which are riddled with factionalism and petty politics, which unfairly distribute representation, and which, by their very existence and authority and powers, allow appropriate government agencies to take a hands-off, not-me position and make it difficult to seek redress through the Courts.

One of the big problems that we see is the inability of the councils or their refusal to manage on a mixed troll or mixed-species basis. This ignores the decision to manage only a single-species basis, ignores migratory patterns, certain species assemblages which are natural and inherent in the ecosystem, and ignores the way fishermen in a number of areas have traditionally fished.

Certain management plans used by the councils bear investigation by Congress. Our testimony deals with this, and, particularly, we would like to emphasize that the councils need to have the ability to deal with habitat issues and pollution matters. Also, fishermen are particularly hurt and the environment is not served, nor is the national interest by saleable, transferable quotas. Our New Jersey fishermen who are here advise me the surf clam industry is

an example of this. It has been subjected to the ITQ system. Where there used to be 200 boats, there are now 40. Where there used to be a 48-inch dredge, there is now one that is 160 inches, and eight tons of surf clams have not rebounded, less people are employed, and the industry is concentrated in the hands of a handful of companies.

Additionally, I should mention enforcement. What is not working is the role of NMFS as Judge, jury, and prosecutor when it comes to fishermen who are accused of unlawful conduct. Fishermen seeking justice are charged more for seeking justice than they are for cutting a deal. Among our recommendations are that Congress in this reauthorization Act should charter an independent investigative commission to study the way in which fisheries are being managed, determine the winners and losers, and make recommendations for how this should be managed in the future. Congress should request a study of the GAO on the effects of the saleable transferable quotas of the surf clam industry of New Jersey.

Congress should amend the Magnuson Act in the reauthorization process to accomplish the following: To recognize the value to the national interest of the traditional and historic small-scale, family-oriented fishing operation; to recognize the value of the data provided by fishermen and make that equally as scientific as anything from a scientist; to change the law to get NMFS out of the enforcement business and put that where it belongs with the marine police and the Coast Guard and establish independent tribunals in which a fisherman has a fair chance.

We would also like to give you some suggestions for raising some funds. We think that we ought to look at an EC-like mechanism which establishes a reference price—when imports come in, drive the price down which happens under management plans, that this would allow—what the EC does is to levy a tax that raises the price paid by customers on the species to the reference price and, therefore, raising funds. We think that there should be exploration of a vessel buy-back program to address the excess capacity, and additional recommendations are in our testimony. Thank you very much.

Mr. LANCASTER. Mr. Brouha is next.

#### **STATEMENT OF PAUL BROUHA, EXECUTIVE DIRECTOR, AMERICAN FISHERIES SOCIETY**

Mr. BROUHA. Mr. Chairman, the American Fisheries Society appreciates your invitation to testify concerning our views on whether the Magnuson Act is ensuring the long-term conservation of fisheries resources and to provide our suggestions for legislative changes to improve the functioning of the Act.

The Magnuson Act has been successful in limiting the foreign fishing in the waters of the United States and establishing a domestic fishing fleet since its inception. It has not, however, been successful in establishing institutions and processes to foster responsive, rational management or the conservation of our fisheries resources.

While our testimony addresses an extensive list of issues, our members involved in looking at this question felt that five were



critical for our concentration: one would be to end unlimited access to commercial and recreational fisheries except for special cases. The second would be to separate decisions affecting allocation from decisions affecting conservation and assigning the allocation role to the councils and the conservation role to the Secretary of Commerce. The third would be to promote risk-adverse decisionmaking. The fourth would be to collect user fees, and the last, to require by law the conformance with 50 CFR 602 overfishing guidelines.

Our extended discussion of issues is ordered around three topics; improving the trusteeship role of the Regional Fishery Management Councils, strengthening the fisheries leadership role for the long-term stewardship of the public's marine resources, and then, finally, improving the processes of fishery management plan development and implementation. I am going to eschew discussion of the first and last of those and focus on strengthening the Federal role—the long-term stewardship of the public's marine resources.

First of all, we feel that an independent national board or commission should be established to oversee the Department of Commerce's implementation of the Act. This is a recommendation that we have made during previous reauthorizations and in several other forums dating back to the original Stratton Report. As far as the leadership by the Secretary is concerned, the Act should clearly establish the policy that the Secretary of Commerce must provide leadership in fishery management processes established in the Act and through the National Marine Fisheries Service exercise better stewardship for the long-term benefit of the public's marine fishery resources.

We have provided suggested language changes in the Act basically that would establish the Regional Fishery Management Councils to act as trustees of the fisheries within their area of authority and to work in concert with the Secretary in his or her role as steward of the nation's fishery resources to exercise sound, long-term judgment. In addition, the Act should also require all fishery management plans to contain measures that will minimize wasteful bycatch. Elimination of wasteful and destructive fishing practices should be adopted as a national policy.

Allocation decisions should be conducted separately from conservation decisions to the greatest extent possible, and this too has been a recommendation that we have made in the past dating back to 1984. I agree certainly with Norville Prosser's statement that there is a need for divorcing the specification of total allowable catches from the allocation processes as he described them.

As far as access is concerned, the Act should establish the principle that commercial access to all U.S. fisheries should be limited, and recreational efforts should be controlled. It should require that all fishery management plans specify allocation among commercial, recreational, and other users. The Secretary should be permitted to collect user fees to help defray the costs of managing fisheries particularly in the case of limited access fisheries.

The Act should promote risk-averse practices of fishery management by specifying that management decisions must err on the side of caution where there is uncertainty about stock measures. As Mr. Gutting pointed out, certainly there are assumptions that underlie various statistical procedures and stock assessment proce-



dures. Those should be explicitly defined and in most cases they are. What has happened, however, is that the councils have pushed to the limit the confidence bound of the highest population so that the allocation could satisfy the short-term economic needs of the fishermen.

As far as overfishing is concerned, we feel that conformance with 50 CFR 602 guidelines on overfishing definitions should be required by law.

And, finally, the last point I would like to make is we don't have "poor science" as alleged by Mr. Gutting. We have inadequate science. The National Marine Fisheries Service's budget should be augmented to provide adequate funding for data collection, research, monitoring, enforcement, and administration. This is a huge and valuable resource at stake, and we provide relatively little in support for proper management of that resource.

Mr. Chairman, members of the Subcommittee, I have a lot of other points that I would like to make. They are included in the record. That concludes my testimony today. Thank you very much. I would be available to answer questions.

[The prepared statement of Mr. Brouha can be found at the end of the hearings.]

Mr. MANTON. Our next witness is Mike Nussman.

#### **STATEMENT OF MICHAEL NUSSMAN, VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION**

Mr. NUSSMAN. Thank you, Mr. Chairman. My name is Mike Nussman, and I am Vice President of Government Affairs for the American Fishing Tackle Manufacturers Association. On behalf of AFTMA, I would like to thank you for the opportunity to come before the Subcommittee today and testify on H.R. 780.

AFTMA represents over 500 fishing tackle and industry manufacturers that are dependent upon a healthy fishery resource as a vital component of their business. Although freshwater fisheries are the largest single part of our industry, marine species have become increasingly important in recent years. While our organization is comprised of small to medium-sized manufacturing firms, we are, for obvious reasons, closely tied to millions of Americans who enjoy sport fishing. But I need to point out that we differ from these anglers. Sport fishing is no hobby to us. It is our livelihood. It means thousands of jobs throughout the United States.

The theme of my testimony today is quite simple. We believe that maintaining a healthy, productive marine environment is good business for the nation. One of the primary keys to the continued success of the recreational fishing industry is to ensure that there will be an abundance of fish available to anglers. For this reason, the Magnuson Act is quite important to AFTMA members. Unfortunately, as other witnesses have pointed out, we understand that 17 years after the Act's enactment, 65 species of marine fish are overfished. And according to the Department of Commerce, our marine fisheries as a whole are producing far below their potential.

Today, we have an opportunity to establish a national marine conservation program for our nation. Such a program would pro-

vide a decisionmaking process to enhance the long-term viability of economic interests such as AFTMA's and others that rely on marine resources. The scope of the problem we face is relatively straightforward. More people along our coast, higher seafood consumption, and more sophisticated harvest technology spell trouble for fishery managers and for fishermen.

Further, history suggests that we are not prepared to address this challenge. The basic philosophy characterizing much of the management of marine resources has allowed for the overexploitation of many fisheries. Let me reference here a recent article from the journal of Science which is attached to my testimony. In this article, the authors conclude that our lack of understanding and inability to predict fishery resources mandate a much more cautious approach to resource exploitation than is normal. Then they reference a number of examples where natural resources, marine fisheries and otherwise, have been overexploited often to the point of collapse.

The problem faced by fishery managers today is clear. Fishermen, both recreational and commercial, argue that fish are available to them as a public resource. Limitations on access typically are initiated after there is clear evidence that a fishery is in decline. The evidence of overharvesting is usually a decline in the catch-per-unit effort or perhaps the complete collapse of the fishery. The net result is that although the fishery manager thinks that the resource should be protected, he or she faces tremendous pressure to allow users to take more fish.

The most commonly recommended solution to this problem has been to collect more data, to do more research, to enhance the scientific understanding regarding the fish stocks in question. However, to conduct such research on all of our fisheries would require significant increases in both funds and personnel. We believe such increases are unrealistic in this budget climate and, therefore, not likely to be a solution we can consider.

So what can Congress do to address the dilemma of too few fish for too many sophisticated fishermen? Mr. Chairman, AFTMA has a number of recommendations that I have included in my written testimony, and given the time and the hour today, I think I will stop here and thank you for the opportunity to testify.

[The prepared statement of Mr. Nussman can be found at the end of the hearings.]

Mr. MANTON. Thank you. Our next witness will be Stephen Sloan, Vice Chairman of The Billfish Foundation.

#### STATEMENT OF STEPHEN SLOAN, VICE CHAIRMAN, THE BILLFISH FOUNDATION

Mr. SLOAN. Thank you, Mr. Chairman. My name is Stephen Sloan, and I am Vice Chairman of The Billfish Foundation. I want to thank you for inviting me to testify today.

The Billfish Foundation is dedicated to the preservation of billfishes through conservation, research, and advocacy. We have funded many worthwhile projects such as a Tetracycline Tagging Program which shows the growth of billfish at sea; a DNA study for specie identification; a bibliography of all billfish materials in

print. We have funded the ICCAT Observer Program and a study on the impact of recreational billfish angling to the various economies of the coastal States, as well as the development of a new billfish and tuna tagging system to ensure greater tagging returns.

We have been involved in many other research projects since our inception five years ago, and we have also developed the "No Marlin on the Menu" slogan for public awareness of the depleted condition of billfish stocks, and have, in fact, gotten the A & P Company to withdraw billfish from all their stores in the United States and Canada, and have asked the Heinz Company, who have agreed, to not use marlin as cat food in one of their operations in Japan.

I am also associated with the following organizations, and I will do the acronyms: MAFAC, ICCAT, IGFA, NCMC, CAACC, of which I am the Chairman—the Confederation of the Associations of Atlantic Charterboats and Captains, the Fisheries Defense Fund, and the United Gamefish Anglers, as well as a member of the Dioxin Committee now in serious operation in the New York area. I represent the Recreational Fisherman and the Charterboat Industry of the Eastern Coastal States. Both groups contribute over \$2 billion and 50,000 jobs to the economies of these States. The Charterboat Industry takes over one million trips a year and takes five million Americans fishing for recreational purposes.

In order to grasp just what billfishing means to our economy, I am enclosing an Exhibit A which basically capsulize States that each tournament-released billfish is worth approximately \$3,000 plus. Now, those fish are sold in Japan and other places for as little as \$50. So America is the leading proponent of recreational billfishing throughout the world. And a reminder that billfishermen release 98 percent of their catches. We were one of the earliest groups to practice conservation on any specie of fish. We have tagged and released thousands and thousands of billfish including our own tetracycline program, and basically what happened and where did we go wrong?

Right now there is no Nantucket Billfish Tournament. The Ocean City White Marlin Tournament is almost nonexistent. The Montauk white marlin charter business is out who won't take your money to go fishing for them. The Masters Angling Tournament, one of the most prestigious tournaments in the world, was organized in the Palm Beach for the last 28 years has now moved to Cancun, Mexico, because of lack of fish. This meant tens of thousands of dollars per tournament, per angler invested in the economies where these tournaments happened, and now they are nonexistent.

The O word and the B word took over. Commercial overfishing and indiscriminate bycatch have all preyed on the highly migratory species, especially billfish. These conditions have wrecked havoc upon these specie stocks. I was astounded when I attended the ICCAT meeting in Madrid and was shown a graph, which I have enclosed in my testimony, which showed that white marlin now is in a serious state of decline as well as bluefin tuna, yellowfin tuna, skipjack tuna, big-eye tuna, and some others. They are all in decline. The charts are all down and show a serious decline in the curves.

In addition, ICCAT voted that any further research and observer funding must come from sources other than dues paid by members which means they are turning to the recreational community for funding of observer programs and continued research on billfish.

And I would recommend the following: We must delete or amend the Atlantic Tuna Convention Act and the Magnuson Act to provide for the deletion of Section 206[B] language. We cannot be tied to the nonconservation efforts of other nations who show no inclination to go against their self-interest which is catching, killing, and selling, and that is direct quote from the ICCAT meeting. The solution belongs in the confines of the National Marine Fisheries Service, the steward of our nation's living marine resources. Input from the council system would be helpful. This is a must first step for the beginning of a cohesive management and conservation program for billfishes and indeed all highly migratory species.

And how do we pay for this? Of Federal funding, we should require a billfish stamp, a tuna stamp, a shark stamp for recreational fishermen who would, in my opinion, gladly pay to see these resources preserved. Funding from the program would provide a mandatory observer program on all vessels that are heavily engaged in bycatches of highly migratory species. This also, by the way, will create jobs with a highly useful purpose. We propose better coordination between NMFS and the State Department on ICCAT issues, and the Deputy Director of ICCAT should not leave this country without a clear understanding of what his mission is. The rest of my testimony is submitted, and I want to thank you again for allowing me to appear.

[The prepared statement of Mr. Sloan can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Sloan, and our last witness in this panel is Jerry Leape, Legislative Director, Ocean Ecology, Greenpeace USA, representing the Marine Fish Conservation Network.

#### **STATEMENT OF JERRY LEAPE, LEGISLATIVE DIRECTOR, OCEANS-ECOLOGY, GREENPEACE USA, REPRESENTING THE MARINE FISH CONSERVATION NETWORK**

Mr. LEAPE. Thank you, Mr. Chairman. My name is Gerald Leape, and I want to thank you for the opportunity to present the views of Greenpeace and those of the Marine Fish Conservation Network on the Magnuson Act reauthorization. First, to shorten my remarks, I would like to associate myself with remarks by Mr. Brouha on the importance of the precautionary principle in fisheries management and the need to prevent overfishing and rebuild depleted fish populations and also with those of Mr. Hayes on those matters.

As you are well aware, Greenpeace has been involved in fisheries issues both on the high seas and within our nation's EEZ for more than 10 years. We also work with our offices worldwide on fisheries issues and seek to advocate sustainable fisheries management that is based on maintaining healthy marine ecosystems.

The last reauthorization of the Magnuson Act was our first foray into the broader issues of fisheries management. Despite Mr. Gutting's assertion, we felt it was pretty lonely for conservation back then. This year, as you have heard today, it is not. The Marine

Fish Conservation Network Steering Committee organizations whose names you heard earlier all have made a priority of achieving change in the way U.S. fisheries are managed. We have been joined by many other conservation sport and commercial fishing groups in our effort to make conservation the top priority in fisheries management. And, in addition, we recognize the importance of building a new constituency that is concerned about fish.

In addition, I would like to reiterate our strong conviction that inaction during this reauthorization is unacceptable. Without a fundamental shift toward conservation, the continued fish declines could bring on a crash in the fishing industry from which it will be unable to recover. The effects of a crash in multiple fish stocks would have a catastrophic effect on the marine environment.

Today, as many of the previous witnesses did address, I too would like to address the issue of bycatch, and I would also like to appreciate the opportunity to be before this Committee for this occurrence once every two years when I can agree with the gentleman from Alaska, Mr. Young, that bycatch is a very serious problem and one that needs to be addressed in this reauthorization. This chance for agreement with Mr. Young is an unusual opportunity for Greenpeace.

The problem of bycatch or waste in U.S. fisheries ranges from almost nothing to more than nine pounds of nontarget catch for each pound of the intended catch. Much of this is thrown overboard because its retention is prohibited by regulation. Nationwide, the level of bycatch is estimated to be as high as 20 percent of the total catch. Globally, using the 10 percent figure, bycatch is estimated to be between 12 and 20 billion pounds of fish each year. There is a strong temptation to say, "Let us force the fishers to retain their catch, and the problem is solved." In fact, that has been the focus of recent, well-intentioned efforts of certain sectors of the fishing industry.

Nontarget fish is being ground into fishmeal, and pilot projects allowing distribution of bycatch to the needy are being tried on both coasts. While the latter of these two projects has a laudable goal, neither of these efforts do reduce effort which must be the ultimate goal. The only other efforts going on are when the bycatch of one sector of the fishing industry is the intended catch of another. Then there are provisions where the fishery can be shut down. So then what do we do? Well, we expect and hope that the industry initiatives continue. We believe that we need to develop a program that would initially target the fisheries where the problem is greatest. The intention would be then, yes, to expand this program to all U.S. fisheries.

As part of the shifting of the burden of proof to the fishing industry, first, the fisheries observers must be required on all boats involved in the program. From there, the next step would be to supplement already collected data with new information on catches, species composition of all fish caught, and total fishing effort. Using this data, standards should be developed for each specific gear. Schedules of reductions could then be developed to meet those standards with the disincentives of large fines or other fees for noncompliance.

The Federal Government, at the same time, should expand its conservation engineering, gear development programs, and fish population assessments to play a joint role with industry in finding a solution. How do we pay for it? First, we should push the Appropriations Committee to increase the funding for Fiscal '94 for NMFS, for all line items dealing with fish conservation work and conservation engineering. In addition, there should be either a tax on the ex-vessel value of the fish, as is being tested in the North Pacific, or in the case of sport fishers, an increase in licensing fees. These fees should be set according to the needs.

Another option is to require observers on every boat, forced retention of the fish, and institute a series of fines according to level of bycatch. Immediate options for action include that the councils could use right away are more rigorously implementing available regulations under the Clean Water Act, Endangered Species Act, and the National Environmental Policy Act to address the problem.

In closing, we will seek to amend the Magnuson Act to include as one of its goals to seek to reduce bycatch in commercial fisheries to insignificant levels approaching zero. Thank you for the opportunity to testify, Mr. Chairman. I look forward to working with you and your staff throughout the process in an effort to reform U.S. fisheries management. Now I am available for questions.

[The prepared statement of Mr. Leape can be found at the end of the hearings.]

Mr. MANTON. Thank you, Mr. Leape. That concludes the testimony of our second panel, and we now come to the time for some questions. And I will address this to the whole panel—somewhat of a general question, but perhaps each of you might want to jump in at some point and offer your views. As currently written and implemented, where is the Magnuson Act taking us? Will we see small-family operators squeezed from the market and replaced by large corporate interests? Will we see a growth in sport fishing harvests with reductions in the commercial take? Are such changes in the nation's best interest? If not, what sort of policy changes should Congress consider to ensure that the Magnuson Act will more effectively mandate fishery management and conservation in the national interest? It is a long question. Mr. Brouha.

Mr. BROUHA. Don't you want us to answer that by yes, yes, no, and all that sort of thing?

Mr. MANTON. All of the above.

Mr. BROUHA. I won't confuse you any further. As to where the Magnuson Act is taking us, I think it is taking us toward more complete collapses of fish stocks because in large measure every time there is an inadequate amount of information, we push the allocation process and the total allowable catch to the outside of the envelope, this is what I call risk-prone decisionmaking, which eventually must result in stock collapse, in my opinion, for most fisheries.

You asked the question about whether small-family operators will be replaced by large corporate interests. In my estimation, that is, as in the surf clam industry, perhaps going to be the case in the short-term. Clearly, at this point, we have too many fishermen chasing too few fish. Somebody has to stop. I think at some

point when the stock recovery does take place, there will be an increased opportunity for participation.

You asked the question will we see a growth in sport fishing harvests with reductions in the commercial take. I think it depends on the councils, and I think it depends on the socioeconomic situation for any particular given stock. That is not a very easy question to answer in a generic form.

Are such changes in the nation's best interests? Well, right now, the National Marine Fisheries Service estimates that we have some 100,000 jobs and \$3 billion in opportunity costs on an annual basis so I would have to say, no, I don't think so.

You asked, finally, what sort of policy changes should Congress consider to ensure the Magnuson Act more effectively mandates fishery management and conservation in the national interest. I think Mr. Hayes pointed out that having long-range planning vested in the Secretary of Commerce clearly is the best way to establish the long-term national interest. And as I suggested to you, a national commission perhaps overseen by the President to ensure that the processes are adequately followed and the data are considered within appropriate guidelines is the best way to do that.

Mr. MANTON. Thank you. I still have some time left if anybody wants to venture an answer.

Mr. LEAPE. Sure.

Mr. MANTON. Mr. Leape.

Mr. LEAPE. Sure. I would love to. I agree with Mr. Brouha that the Magnuson Act is taking us, I believe, toward multiple fish stock collapse. The second part of the question brings in the whole question of ITQ's, and Greenpeace does have concerns about ITQ's that might manifest themselves in squeezing out the small-family fishers which are very important to the overall balance of our fishing industry.

The next part of the question—Greenpeace does want to see a balance between sport fishing interests and commercial interests, and we believe there should be such. What policy changes should Congress consider? Well, the Marine Fish Conservation Network has published a list of 10 objectives. The top two are preventing overfishing and rebuilding depleted fish populations and reducing waste in our fisheries and also reducing conflict of interest in the council decisionmaking processes. I won't go into detail on the rest of them, but they are all included in the record in our brochure, and I think those changes are in the national interest and would make for better fisheries management.

Mr. MANTON. Mr. Sloan.

Mr. SLOAN. Mr. Chairman, I don't think you have to worry about increased sport fishing efforts competing with commercial interests at all because as this thing unfolds and as boats have to go further and further offshore, sometimes 100 miles now each way, to get reasonable sports fishing, it becomes academic whether—the question is would I buy a boat, would I spend my money in a marine or in a motel or ice bait tackle, gasoline, and repairs if I have to go through that to catch a fish to enjoy myself, and that impacts not only the recreational fishing community but the charterboat fleets as well. And if you have seen the graphs, and they are available through the ICCAT papers, all fisheries pelagics are down includ-



ing the sharks, by the way. We have serious problems with shark fishing today which was started by recreational fishermen.

So I don't think this competition—and I think the question is where is this leading all of us, and unless we have some changes in bycatch, we have to have an observer program, we have to stop habitat destruction vis-a-vis the dioxin issues which is now being massaged in the New York area to dump dioxin six miles off Sandy Hook in one of the most prolific fishing grounds that we have. Unless we stop that, we will not have to worry about the recreational fishermen and all the industry. In eastern Long Island alone it is \$1 billion just for Suffolk County so we don't have to worry about that if it continues.

Mr. MANTON. Thank you, Mr. Sloan. That dioxin issue is one with which we are wrestling. I won't get into that right at the moment. My time has expired, and I will turn the floor over to Mr. Hamburg for questions.

Mr. HAMBURG. Thanks, Mr. Chairman. I have a couple of questions for Mr. Brouha. Did I pronounce that right?

Mr. BROUHA. Yes, you did.

Mr. HAMBURG. In your testimony, you mention the need for risk-averse practices on the Klamath River which is maybe the most important anadromous fishing river left in my district. There have been several seasons where the natural spawning escapement only reached about two-thirds of the recommended floor which happens to be 35,000 chinook salmon. In fact, in 1992, the PPMC recommended that fishing continue below that recommended escapement level, and I would just like to ask what you think the ramifications of this are from a biological perspective?

Mr. BROUHA. I certainly don't think you can rebuild stocks under that kind of a situation. Continued underescapement is, obviously, going to result in, at best, sustaining fisheries, and certainly if there are natural fish and mixed stock fisheries with hatchery-produced fish, as is the case in the Klamath, are you going to severely degrade and reduce the natural stocks which is a continuation of the trend. In discussing this with Larry Sims, Executive Director of the Council, about two days ago, I asked him about this particular situation. And he said, "Clearly, the data that we have, have been insufficient, and that we have gone toward too active a fishery, and we, in fact, for the next year are proposing to cut that back by 50 percent." Now, whether that is going to be adequate or not, I do not know. But clearly, that underescapement is of concern to the council, I think, as well.

Mr. HAMBURG. Yes. It is a real concern to me. In fact, one of the tribes that is affected by this—I think it is the Hoopa that gets 20 percent of the allocation and the Urook get 80 percent—is recommending a deficit accounting methodology which calls for significantly higher escapement to balance years in which escapement has been below the floor. Have you looked at that proposal at all, and do you have a position on that?

Mr. BROUHA. I am unfamiliar with that specific proposal the Hoopas have made. I would say as a generality that in this particular case through consistent underescapement to these natural habitats that we have created an environmental deficit, in a sense, just as we have for the timber in the Pacific Northwest. And certainly

the restoration time can be much reduced by comparison to timber, but this 'environmental debt does have to be paid in some way. So from a conceptual perspective, there may be some merit to their proposal.

Mr. HAMBURG. One of the arguments we hear is that even if the escapement—I mean, the fishermen will often argue that in the years in which we have low escapement, we sometimes have higher production so, you know, they will consistently argue that these escapement floors maybe aren't as necessary as the scientists say they are. Have you heard those kinds of arguments about—I mean, they will talk about, you know, that maybe there is not enough habitat up there anyway for the amount of spawning that—you know, you get too many fish up there and there is too much competition for habitat, and so, you know, you can get lower returns from that. Have you ever heard that argument?

Mr. BROUHA. Yes, I have. In fact, I used to be a member of the Trinity River Task Force Action Group so I am an old warrior in that particular area. But clearly the situation in both those Trinity and Klamath watersheds is that we have habitat that has been extensively degraded over time—the 1964 flood that resulted from a rain on snow event, and subsequently the aggrading of stream beds in some cases by 24 or more feet. In the case of the Trinity River—the South Fork at Hyampom, it has taken until now to re-degrade that stream by only eight feet at that particular point.

When you speak about the capacity of the habitat to support natural fish, it is reduced, yes, but at the same time, we have so underseeded the habitats with natural fish that at this point it is critical to save every returning natural spawner.

Mr. HAMBURG. Right. Also, you mentioned the advantage of including others (especially the U.S. Fish and Wildlife Service).

Mr. BROUHA. Yes, and together with the National Marine Fisheries Service, there has been a certain amount of difficulty, regarding the endangerment of anadromous salmonids in the Pacific Northwest, as to whose responsibility it is. And I think involving both parties on the councils would benefit that particular situation. I think overall, the Fish and Wildlife Service has a great deal to offer in terms of the estuarine environment and their knowledge about that.

Mr. HAMBURG. Do you also see a problem with the rather low representation of tribal groups on the councils?

Mr. BROUHA. I am not aware of what those statistics are, Congressman.

Mr. HAMBURG. I believe there is one representative on the PFMC. It seems that the way things are going legally, that may not be—really indicate the balance of power there.

Mr. BROUHA. That falls into a legal context, you know, they are sovereign nations, and I really don't know if we can address it.

Mr. HAMBURG. Yes. And, you know, the problem with lawyers is kind of like scientists. You know, everybody has got their own theory of the law just like everybody has got their own scientific theories about fish, and it seems like sometimes the fish don't really fit the formulas. Thank you, Mr. Chairman.

Mr. MANTON. The gentleman's time has expired. All time has expired. If anybody has an answer or comment that they didn't get to

give, we would be happy to have it in writing to the Committee. That concludes our hearing for today. Thank you all for being with us and giving us excellent testimony. We will continue to have these hearings. Some of them will be here. Some will be in the respective districts in the form of field hearings. Thank you all.

[Whereupon, at 5:00 p.m., the subcommittee was adjourned; the material submitted may be found at the end of the hearings.]



# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION

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WEDNESDAY, JUNE 16, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 3:05 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Unsoeld, Taylor, Lancaster, Hamburg, Cantwell, Young and Coble.

Staff Present: Jeffrey Pike, Staff Director; Suzanne J. Waldron, Press Secretary; Jim Matthews, Staff Director; Greg Lambert, Counsel; Lori Rosa, Legislative Clerk; Jean Flemma, Professional Staff; Mike Stemple, Detailee, Fish and Wildlife Service; Edmund B. Welch, Maritime Counsel; Barbara Jeanne Polo, Professional Staff; Frank Lockhart, Sea Grant Fellow; Bill Wright, Subcommittee on Coast Guard and Navigation; Rodney H. Moore, Jr., Minority Professional Staff; Jill Brady, Minority Professional Staff; Edward L. Lee, Minority Professional Staff; Margherita Woods, Minority Staff Assistant; Laurel Bryant, Minority Professional Staff; Julie Roberts, Minority Sea Grant Fellow.

## STATEMENT OF THE HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK

Mr. MANTON. Good afternoon, ladies and gentlemen. I think in the interest of everybody's valuable time we will get started.

Welcome to the third Subcommittee hearing on H.R. 780, legislation to reauthorize the Magnuson Fishery Conservation and Management Act.

Today, we have the opportunity to hear from a number of fishery managers from various coastal States. I think it is fitting that we take a look at their concerns regarding the Federal management of marine fisheries.

The Magnuson Act is the Federal law governing fisheries in the U.S. Exclusive Economic Zone. States have jurisdiction over waters within three miles of their coast lines. Unfortunately, fish are notorious for their wanton disregard for these jurisdictional boundaries. Therefore, coastal States in their management of near coastal fish stocks invariably must consider the interaction between their policies and practices and Federal fishery management plans. The States have a clear interest in the Federal fishery management

scheme and it is important that we hear their views on the Magnuson act.

Moreover, State fishery managers are the officials who most often work face-to-face with the Nation's fishermen who are regulated under the Magnuson act. When a fisherman objects to restrictions, he is more likely to take his grievances to the local fish and game agent than to a NMFS bureaucrat.

A major problem with implementing the Magnuson act is the need to accommodate the various regional interests in our diverse Nation. The regional fisheries management councils, established under the Magnuson act, play an important role in assuring problems are addressed by those most knowledgeable with the fisheries of a particular region.

However, the States have a perspective that may be quite different from the views of members of the councils. The State representatives testifying today bring a firsthand sensitivity to the divergent issues affecting their respective regions. The Subcommittee welcomes your valuable insights into the implementation of the Magnuson act.

We have heard and will continue to hear the concerns of various user groups. Taking into account the views of environmentalists, commercial fishermen and recreational fishermen, we are seeking to develop a consensus approach that will protect this valuable resource for current users and future generations. I thank our witnesses today for helping us in this task.

I would at this point like to recognize Mr. Young, but I don't see him in the room. Are there any other Members who have opening statements.

Mr. HAMBURG. Very briefly.

Mr. MANTON. Mr. Hamburg?

#### STATEMENT OF THE HON. DAN HAMBURG, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HAMBURG. Yes. Thank you, Mr. Chairman. I want to thank you for convening this hearing. It is very important we look at the State concerns regarding reauthorization of Magnuson.

I want to particularly thank the Subcommittee and the staff for inviting Mr. Boyd Gibbons, who is the head of Cal Fish and Game, and I am sorry he was not able to attend because I would liked to have discussed with him the continuing controversy around the Fall Run Klamath Chinook, which has been a major consumer of time and energy in my office for the last three months.

The presence of the States here today highlight the necessary complex and multijurisdictional issues that we are dealing with here. We have two Federal agencies, the Pacific Management Council, the State of California, and at least two Indian tribes that were all involved in the recent controversy in my district, and with all those brilliant people involved in the process, we still didn't come up with a solution that very many people liked.

I recognize the issue and the concept of regional based fisheries management and I know that is the cornerstone of the Magnuson act and I truly believe we need that to be our major tool. However, the problem that we have run into has been in the interaction be-

tween the regional approach and the Federal responsibility. I feel that in the authorization process we must evaluate what has and what has not worked so that in the future we might avert disasters such as the one we have had on the Klamath River.

We must find and correct flaws that exist in the regional management structure so that it will function more effectively to ensure conservation and sustainable utilization of our fisheries resources.

I look forward to hearing the testimony from our panel this afternoon. Thank you, Mr. Chairman.

Mr. MANTON. Are there any other members?

Hearing none, our friend and colleague Solomon Ortiz had intended to sit in on today's hearing. Unfortunately, he will be unable to do so because of another commitment. I know he was looking forward to hearing from Mr. Rosen, in particular, of the Texas Parks and Wildlife Department.

I understand the witnesses have already been informed of the Subcommittee's policy of limiting all testimony to five minutes. Your written statements will be included in the official hearing record in their entirety, however.

We will first hear, and perhaps—we are on a vote. I don't know if you are all aware of that. Maybe we will break for about 10 minutes, 10 to 15 minutes, and we will come back and our first witness will be—is Mr. Young here?

Well, we will get to the panel when we get back and, also, if any of our guests who do not have a seat want to, they can find a seat in the lower dais here. Please excuse us while we vote and we will adjourn temporarily for 10 or 15 minutes.

[Brief Recess.]

Mrs. UNSOELD. [Presiding.] The Committee will come to order, and now that Mr. Young is here, we will have an opening statement from the senior Republican on the Committee.

#### STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. YOUNG. Thank you, Madam Chairwoman. I will submit my statement for the record.

I want to welcome the State witnesses here from the fish and game departments and their positions on the Magnuson act and suggestions how it can be improved or suggestions how it should remain as it is.

We have an interplay in activity. It is a Federal law but it also pertains to State lands. I look forward to their testimony and especially my commissioner, Mr. Rosier, on his work on fish and game.

I do believe, and I hate to say this, there are no more Texans in this room, but with all the rest of the coastline of all the members at the table, we would still have twice as much as you have, so we have a very specific interest in this.

Thank you, Madame Chairman.

[The statement of Mr. Young follows:]

#### STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, I am pleased that we are continuing our review of the Magnuson Fishery Conservation and Management Act. During this process, it is vital that we



consider the ideas of many different individuals representing a wide spectrum of interests in our Nation's fisheries.

This third hearing will give us the opportunity to hear from State Government officials who play an important role in fishery management. The concerns of each State may differ significantly from the others due to the varying conditions and fisheries of each locale. We should listen carefully to their ideas so we can determine how to best address these concerns with revisions to the Magnuson Act, if revisions are needed.

While the Magnuson Act sets out Federal policy for management of our Nation's fisheries in Federal waters beyond the States' territorial seas, fish are not aware of these Federal/State distinctions and migrate between these zones. For example, some fish species spawn in coastal habitat and then migrate to open ocean. As we know well, we must establish a framework which provides rational management of our Nation's fisheries and considers the needs of the Federal Government, the State Governments, the resource users, and the resource itself. Whatever bill we finally approve should strike the proper balance among these groups.

Mr. Chairman, I look forward to working with you on this important issue for our Subcommittee.

#### STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, I want to commend you for continuing the series of hearings on the Magnuson Fishery Conservation and Management Act. This hearing is particularly timely as the fishing season in my district is well underway. As is typical of this time of year, problems in the management of our fisheries resources are brought to the forefront as fishermen realize the impact of complying with increasingly strict conservation measures.

I regret that New Jersey could not be represented on the panel today. As in most fishing States, however, New Jersey continues the struggle of striking a balance between conservation of the resource and meeting the economic needs of the citizens. Moreover, the battle of the commercial versus the recreational sector poses a constant challenge for our State fisheries managers.

Today, I want to focus my attention on the fluke management plan. This plan, along with its five amendments, has been a major source of discontent among both the recreational and commercial fishermen in my district for the past several months.

Among the concerns raised by the recreational sector is the 6 fish bag limit. They maintain that a 6-fish bag limit is untenable and would cause undue economic hardship, particularly on the party and charter boat industry. I understand that increasing the limit to 10 fish would alleviate this concern.

Second, the reduced fishing season would further aggravate a worsening economic condition. Third, although the minimum size increase from 13 inches to 14 inches has been accepted by the recreational sector, they believe a similar size increase should be adopted by the commercial sector. On the other hand, the commercial sector believes their quotas are too small and cannot sustain their fleets.

Fourth, there is strong sentiment that the plans and subsequent regulations are not based on appropriate scientific data. I understand that 1993 fluke quotas are based on 1991 data. Fishermen in my district maintain that using 1992 data would better reflect the state of the resource and thus would be more appropriate.

I would like to hear from the various States represented who have a fluke fishery, what State regulations have been implemented to meet the quota reductions called for in the management plan and how these have been received by the fishing community. Additionally, I would like to know if the States are in compliance with the Federal plan and if the regulations implemented will meet the proposed conservation goals.

I am also interested in hearing the States' opinions on the adequacy of scientific data. Where is it lacking and how can we address these voids? Certainly, adequate scientific information on the fishery is necessary to develop appropriate management plans and we must work towards improving in this area.

Management of a migratory species must occur along the entire migratory range of that species in order to be effective. Complaints that one State is in compliance with conservation measures while another State is not, is common in the fluke fishery as in many other fisheries. Accordingly, I intend to work with this Subcommittee to address this discrepancy through the development of interjurisdictional fisheries legislation. I would appreciate hearing the States' views on this legislation, particularly as it relates to the fluke and the weakfish fisheries.

Finally, complaints have been raised concerning inaccessibility to the council and commission meetings and hearings. Is this common in other States and should it be addressed legislatively or administratively?

I will close my remarks by welcoming the witnesses today in hopes that they will be able to address some of the issues which I have raised.

Thank you, Mr. Chairman.

Mrs. UNSOELD. You may not have an exclusive hold on the beauty but you do have a fair share of it, I will acknowledge. We have a little in Washington, also.

Mr. YOUNG. A very small bit, but go ahead.

Mrs. UNSOELD. We are going to take the witnesses a little out of order because, as I understand it, Mr. Rosier may need to leave and so we will first call on Mr. Carl Rosier from the Alaska Department of Fish and Game.

#### STATEMENT OF CARL ROSIER, COMMISSIONER, ALASKA DEPARTMENT OF FISH AND GAME

Mr. ROSIER. Thank you, Madam Chair, members of the Committee.

Mrs. UNSOELD. I will repeat also that for all of you, your full testimony will be inserted into the record and so make any use you want of your five minutes.

Mr. ROSIER. All right, thank you very much.

Well, thank you for the opportunity to come before you here today to discuss one of the Nation's most important pieces of ocean legislation, the Magnuson Fishery Conservation and Management Act.

I am Carl L. Rosier, Commissioner of the Alaska Department of Fish and Game.

Interestingly enough, there are striking similarities between the issues which were facing the Nation when the act was first passed and those facing us today. The only difference is that the debate is among ourselves rather than with a foreign nation.

My comments today regarding the act will focus on three major issues: One, the need to strengthen the conservation standards of the act to further promote the long-term health of our Nation's fishery resources and address the problems of discard waste and bycatch; two, the importance of fisheries in the economy's of our coastal communities and the need to reaffirm our national goals to protect and enhance those local fisheries' economies; and, three, the importance of maintaining and strengthening the regional council process.

Representative Young kind of stole my thunder a little bit, but I would like to take a moment of the Committee's time to in fact brag about Alaska's fisheries because we are pretty proud of them in that part of the world. I would like to say that in 1992 the catch off Alaska totaled over 5.2 billion pounds of seafood. This was about 50 percent of the national harvest. Preliminary figures indicated the 1992 ex-vessel value was roughly \$1.5 billion.

In a State with little or no manufacturing-based economy, the seafood industry is the largest private, basic industry employer, providing more than 77,000 seasonal jobs and an annual payroll of \$600 million. Dutch Harbor-Unalaska ranked number one in the

Nation for seafood landings in 1992 with total landings in excess of 736 million pounds.

In the westward region, basically the area west of Cook Inlet, the seafood industry accounts for almost 90 percent of the private sector income, but many of our coastal communities almost entirely depend on the commercial fisheries for cash income.

The economic and social significance of fisheries to Alaskans underscores the importance the State places on the effectiveness of the act to govern domestic fisheries.

Going back now to the three points that I had mentioned I wanted to cover during this testimony, in our view the act has been exceptionally successful but there are areas in which it may be strengthened and streamlined to meet today's conditions in the fisheries of the United States. In our view, Congress should strengthen the role of the councils and give a clear signal to fishery managers regarding conservation of our Nation's fishery resources.

Because of current interpretations of the act, the national standards, bycatch and discards are treated more as a cost of doing business than as a form of waste. Conservation management of our common property fishery resources must address the broader issues of discard and waste and to embrace the concept of wise use.

The State of Alaska urges Congress to, one, strengthen the conservation provisions in the act to address waste and conservation issues. The purpose of national standards of the MFCMA was to set the standards for fishery management and utilization. Conservation of our fisheries' resources should be the primary purpose of the act and there should be a new national standard setting conservation as a first priority for fishery management plans.

We would urge the adoption of provisions in the act setting the goal of eliminating economic discards to achieve full utilization of harvested fishery resources and require fishery management plans to be modified to set up programs for reaching this goal in a specified timeframe.

Three. Adopt provisions in the act to control, reduce and minimize bycatch in our Nation's fisheries and include measures to give priority to the use of fishing gear or fishing practices which result in the lost bycatch for the given harvest of a particular target species.

Suggestions in regard to the support for the Nation's coastal communities and the shore-side economies: I think fisheries, as I have indicated, play a significant role in the economy and the way of life in many of the Nation's coastal communities. It is important that we as a Nation maintain and enhance these economic opportunities in our communities.

The State of Alaska believes the goal of achieving economic efficiency in the harvest of our fishery resources is important but should be balanced along with the factors of full utilization and the wise use of the resources and the need for balance among the various segments of the industry. In its promulgating, in terms of strengthening the council process, and promulgating a comprehensive national fisheries policy in 1976, the Congress had the wisdom to keep the day-to-day management of the EEZ fisheries in the region where the fisheries occur.

The system of eight fishery management councils put the decisionmaking where it belongs, with the decisionmakers who are accountable to the fishermen and communities affected. The statutory and regulatory requirements of the MF—excuse me. Rigorous implementation of existing laws and regulations regarding financial disclosure and council appointments will address the issues raised regarding conflict of interest on the council. We urge the Subcommittee to reaffirm this system at this time.

I am sorry, Madam Chair, I was not quite finished.

Mrs. UNSOELD. Maybe you will get to work the rest in on questions.

[The statement of Mr. Rosier can be found at the end of the hearings.]

Mrs. UNSOELD. Mr. Gordon Colvin from New York, with apologies from—oh. Perhaps you would like to wait until the Chairman comes back. We will hold off and hope that he will get back in time.

So next would be Mr. Corky Perret.

**STATEMENT OF WILLIAM "CORKY" PERRET, ASSISTANT SECRETARY, OFFICE OF FISHERIES, LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES**

Mr. PERRET. Thank you, very much, Madam Chairlady.

Members of this Subcommittee, ladies and gentlemen, I am William S. "Corky" Perret, the Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, and a voting member of the Gulf of Mexico Fishery Management Council since 1979. I sincerely appreciate the opportunity to appear before your group today and offer some input to you in your deliberations on your consideration of reauthorization of the Magnuson act.

There are six issues I would like to briefly touch on in five minutes. I may not make it.

The six issues are: management jurisdiction; second, data for management, or rather a lack of data for management; third, conflict of interest for council members; fourth is law enforcement; fifth, habitat; and sixth, the regulatory process.

The Magnuson act has been of utmost importance to cooperative management of the fishery resources of our region. I stress cooperative because in our region most of our fishery resources are shallow water estuarine-dependent species harvested by both the recreational and commercial sector and taken both in the State territorial waters as well as EEZ jurisdiction.

Fishery resources are not constrained by political boundaries. States and the Federal Government share jurisdiction over many of the same resources. Despite clear congressional intent that fish stocks be managed as units throughout their range, National Standard 3, continuing problems impede achieving that goal. Certain fisheries concentrated within State jurisdiction require coordinated management but are not subject to Magnuson act jurisdiction. Thus, a lack of firm legal basis for coordinated interjurisdictional management.

Section 306 should be amended to specifically establish and/or clarify the authority of the States in the absence of a council fish-

ery management plan to manage species harvested in the EEZ that occur in both States and Federal waters.

The Gulf States Marine Fisheries Commission, Gulf States, and the councils have successfully worked together in this shared jurisdiction since the inception of the various institutions in a partnership arrangement for management of marine resources. Recently this authority of the partners has been affected by some divergent legal interpretations which caused confusion and less than effective management arrangement for some species.

State rules have been challenged in Federal court with a lower court ruling invalidating one State's rule. An initial court of appeals brief returned it to the lower court suggesting that all fish in the EEZ should be managed under the Magnuson act. This would create a serious problem, if subsequently upheld by a higher court, and overtaxed the ability of the council system to provide EEZ management for all species not managed under fishery management plans.

With the State management authority clarified, actions by the States under a coordinated interstate fishery management plan for a species would provide for effective management without the need for the Federal councils' costly and time consuming process.

One of the most serious problems facing the council NMFS and the States is our poor information base—biological, social and economic base. Often this is insufficient to support a good management. Under the Magnuson act, the National Marine Fisheries Service is responsible for providing information to the councils for proper management of the fisheries. Serious deficiencies exist in NMFS' collection and management of scientific data. This jeopardizes effective fisheries management.

National Standard 2 requires that conservation and management measures be based on the best scientific information available. However, the only scientific information available is often out of date and highly questionable. Lack of sufficient data to adequately assess the stocks of many species and access to the data in a timely manner hampers effective council management.

A clear example that I can give on this is NMFS' inability to adequately monitor the harvest of species which operate under an annual quota. Delays in data availability have routinely resulted in quotas being greatly exceeded.

I have a suggestion on the budget process. Obviously, I am familiar with some of the financial problems of government being at the State level, and I know you people have that same problem on a much larger scale, but my written testimony provides a suggestion, but for lack of time, I will go on.

Law enforcement is a vital component of fishery management and another area that must be improved. Many believe that the Federal agencies are unable to properly enforce fishery management regulations and that increasing illegal activity is hurting both the resource and legitimate resource users.

Law enforcement is an area where the States have demonstrated their capabilities. Four of the five Gulf States, for example, are working in cooperation with NMFS, however, there is no money provided to the States. If the States were funded with some funds, we think we could do a much better job on law enforcement.

Is that my time? Thank you very much.

Mrs. UNSOELD. Thank you.

[The statement of Mr. Perret can be found at the end of the hearings.]

Mrs. UNSOELD. The next witness is Mr. Rudy Rosen, Director of Fisheries and Wildlife from Texas.

#### STATEMENT OF RUDY ROSEN, DIRECTOR OF FISHERIES AND WILDLIFE, TEXAS PARKS AND WILDLIFE DEPARTMENT

Mr. ROSEN. Madam Chairwoman and Members, I am Rudy Rosen, Director of the Texas Fisheries and Wildlife Department. Today, I am representing the International Association of Fish and Wildlife Agencies, as well as the Texas Parks and Wildlife Department.

The Texas Parks and Wildlife Department is the Texas State agency responsible for management and regulation of coastal fishery resources while the International Association is the Association of State Fish and Wildlife Agencies.

In preparing for this hearing, I was asked to point to areas where the written statement and the position of the Texas Parks and Wildlife Department depart. I will do that, but as you can imagine, individual States can have markedly different views on the effectiveness of an act that is intended to regionalize the management of fisheries. While there are many similarities in administration of the act, experiences differ between councils and even between States within councils.

I can't overemphasize the importance of the Magnuson act to the States because States have primary management authority over fishery resources in States' waters. These States' waters extend three nautical miles, except in the case of Texas, where our territorial sea extends nine nautical miles from shore.

While the Magnuson act has created a strong and regionally responsive system to manage marine fisheries, periodic intensive review will help strengthen the act and make adjustments for changing times. The act correctly focuses fishery management where it belongs, at the regional level, with States and local citizens working together with the Federal Government.

This accessibility and ready-made forum for discussion and involvement has served the Nation well, but the openness often provides for a lengthy and arduous process. In addition, because of the often conflicting demands on fishery managers, almost every major decision has winners and it has losers. Winners are generally happy with the process, losers are not. For some, the effectiveness of the Magnuson act is largely a matter of perspective.

Madam Chairwoman, the Magnuson act is fundamentally sound and must be reauthorized. Regional councils must be retained with essentially all their current function and responsibilities and the role of State fishery management agencies on the councils must be retained in its current form. But there are some adjustments and some actions that can help improve the act.

There is a need for Congress to address the simple fact that the regional council process and, in general, fishery management, is very, very expensive. Commercial and recreational marine fisheries

are worth billions of dollars, yet managers are hamstrung in efforts to fund studies or to mitigate economic hardships in fisheries where drastic harvest reductions are needed to meet conservation goals.

Alternative funding mechanisms are needed, but any fees associated with landings, vessel licenses or other assessments on commercial or recreational fishermen should be the responsibility of State authorities working in concert with the regional councils to meet regional needs and under the auspices of approved fishery management plans.

We don't support broadly mandated Federal assessments or generalized Federal licenses as a means to fund Federal fishery management. Historically, licensing has been the prerogative of the States, and any Federal licensing system would be duplicative, competitive and generally opposed by fishery user groups.

We are amenable to new funding mechanisms specific to fishery management plans and that address specific management needs approved by the applicable council, and where those funds are exclusively devoted to the approved program and project.

Fishery habitat protection should be strengthened too, but any processes to do that should not impede implementation of fishery management plans.

There continues to exist a schizophrenic Federal approach to habitat protection where one Federal agency may make decisions that allow degradation or loss of habitat necessary for production of a fishery that is under a secretarially approved fishery management plan. We agree with the need to better coordinate Federal protection of habitat.

I want to emphasize from Texas's perspective, the act should seek to improve the schizophrenic Federal approach, not invest in the councils or in the National Marine Fisheries Service's inordinate power to block activities. For example, to block environmentally beneficial activities to restore coastal wetlands systems along the Texas Gulf Coast.

Fishery management through the regional council process is complex and lengthy due to extensive requirements for review, public involvement, and conformity with various laws. We support changes to the Magnuson act that would help make the fishery management process more responsive.

One way to do this would be to decentralize the decisionmaking process, placing greater emphasis on actions by the regional director. Another way would be to orient fishery management plans toward broad statements of regulatory policy, and this could provide a framework for the councils to rely more heavily on simple rulemaking processes as opposed to adjustments or the amendment process to full fishery management plans.

A related issue pertains to the role of the Secretary. The Secretary has overturned a number of carefully crafted management measures recommended by different councils. In some cases, the Secretary has substituted his own management plan for that of the council's, often with little or no justification given for the action.

In order to reaffirm the councils' primary regulatory role, the Congress needs to provide stricter controls on the Secretary's ability to unilaterally override council recommendations.



Finally, section 306, the section on State jurisdiction, should be amended to specifically establish and clarify the authority of States. This includes clarifying the States' authority to manage species harvested in the EEZ that occur in both the EEZ and the States' territorial waters in the absence of a Federal fishery management plan, and also the section should be amended to enable a State, with the concurrence of the appropriate council, to establish landing laws or regulations for species harvested in the EEZ as well as in State waters.

Beyond this general overview that I have provided, we offer detailed comments in the written statement in the areas of fees and funding, State versus Federal regulations, conservation allocation and full utilization, interjurisdictional fisheries, specifically on the Atlantic coast, habitat conservation and further comments on administration.

We appreciate the opportunity to make these comments.

Mrs. UNSOELD. Thank you very much.

[The statement of Mr. Rosen can be found at the end of the hearings.]

Mrs. UNSOELD. Mr. Bob Turner, Director of the Department of Fisheries from the real Washington.

#### STATEMENT OF BOB TURNER, DIRECTOR, WASHINGTON DEPARTMENT OF FISHERIES

Mr. TURNER. Thank you, Madam Chairwoman. Good afternoon. I really appreciate the opportunity to address the Subcommittee on the reauthorization of the Magnuson act.

I would like to focus on several issues which I like to typify as the underlying public policy issues incorporated in the act and some serious concerns I think this Committee, and fisheries as a whole, needs to face in order to restore public trust in this act.

I strongly endorse the regional management concept of the Magnuson act. I serve on the Pacific Council and my designee serves on the North Pacific Council. Both of those councils have done a good job in managing the fisheries and preventing overfishing, promoting economic and viable fisheries, and providing quality seafood products to consumers.

The primary fundamental reason why these two councils have been able to succeed in these tasks is the availability of good science. The Pacific Council and the North Pacific Council have followed the advice of their scientists and the advice has served them well. That record can only continue if Congress provides funding to allow these councils to fulfill their statutory obligations under the act. The councils must continue to provide the underlying basis for management decisions. Management decisions must be based in the best available science.

There are opportunities in the reauthorization act, however, to fix some things, as we all know. One of them has already been mentioned, and that is to clarify the States' authority to manage fisheries that are not covered by fisheries' management plans. Both the Pacific Council and the North Pacific Council and the participating States adjacent to them have worked well together in man-

aging fisheries. We share jurisdiction in a partnership of the management of the marine resources.

In the Pacific Council context, this is best illustrated by the partnership between the States of Washington, Oregon, and California. The State must manage anadromous salmon resources where there are major fisheries inside State waters that have to be complemented by Pacific Council managed fisheries and ocean waters. Puget Sound, the Columbia River and the Klamath River are examples where treaty tribes are heavily involved in the management process.

Where Congress has not provided the council sufficient funding to implement a fisheries management plan, the West Coast States, through the Pacific States' Marine Fisheries Commission, have coordinated management effectively, to date. This occurs in shrimp and crab and thresher shark fisheries and now the Commission is looking at scallops.

But lately legal interpretations of the act have called this authority into question. I think it would be incumbent on the Committee to take a look at methods that would clarify a State's ability to manage in a cooperative fashion those species that are not covered by a management plan.

I also think the Subcommittee would do well to take a look at the issue of council composition in both the North Pacific and the Pacific Council. I ask you to consider adding a seat to the Pacific Fisheries Management Council to be appointed by the Secretary of Interior to represent treaty tribes with reserved rights to fish for anadromous fish or other species.

We are very familiar with this in Washington State, as I think the Subcommittee knows. We have 20 tribes with treaty reserve rights. The State of Washington and the Governor, as a matter of recent convention, for about the last 10 years, have nominated only Indians to an at-large position and, therefore, there has been a tribal manager on the Pacific Council during that time. But we also have treaty reserved fisheries in our region and one evolving to some degree in the Klamath River. It would be appropriate, in my mind, to add a seat at-large for tribal representation to the Pacific Council.

The North Pacific Council is currently comprised of 11 members, six from Alaska; a seventh, the regional manager of the National Marine Fisheries Service in Alaska; three from Washington and one from Oregon. I believe this council is unbalanced. The decisions of the council are viewed, certainly in Washington State, as adversely affecting interests from outside of Alaska which could, I believe, be better tolerated if those interests felt they were dealt with fairly in the process.

Washington-based fishers take 60 percent of the catch in Alaska. The addition of two Washington seats would balance the council to make its decisions appear to be more balanced and equitable. However, I do not want to be put among those who believe the voting issues should be used to cover other ills. A change in the council composition is not a substitute for proper administration of the act itself. It is not a substitute for rectifying perceptions of conflict of interest.

Prompt and decisive oversight action by the Secretary of Commerce directed at compliance with the intent of the act will go a long way toward changing the perception of inequity.

And, again, I want to emphasize in this day and age the councils face serious allocation issues. Allocation decisions, as has been said, always hurt somebody, but those who are adversely affected can deal with that adversity much more effectively if they feel they have been dealt with fairly in a public process, and that is what government is here to provide, a fair process.

One final point I want to emphasize, particularly from our perspective on the Pacific Council where we are facing endangered species act issues. The proposals to involve the council further in habitat protection are greatly supported by the State of Washington, and I would encourage the Committee to pursue those activities as well.

Thank you very much.

[The statement of Mr. Turner can be found at the end of the hearings.]

Mr. MANTON. Mr. Gordon Colvin, director of Marine Resources, New York State Department of Environmental Conservation, will be our last witness.

#### STATEMENT OF GORDON COLVIN, DIRECTOR OF MARINE RESOURCES, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Mr. COLVIN. Good afternoon, Mr. Chairman, and members of the Subcommittee. On behalf of Commissioner Tom Jorling, I want to thank the Subcommittee and Chairman Manton, for inviting the Department of Environmental Conversation to testify on the reauthorization of the Magnuson Act.

The Magnuson Act is the cornerstone of the Nation's marine fisheries management programs. In the 17 years since its enactment, it has assured that the Nation's offshore fisheries are professionally managed on the basis of scientific information, with decisions made on a regional basis reflecting the input and judgment of the user community, as well as scientists and managers.

The institutionalization of this approach to marine fisheries management has substantially improved not only the management of fisheries in Federal waters, but also management by States and interstate compacts of all the Nation's marine and anadromous fisheries.

While the transition from unmanaged marine fisheries to professionally managed marine fisheries with a scientific and regional focus has been slow and has not prevented overfishing of a number of important stocks, the process is maturing and the benefits of such management are growing. Reauthorization of the Magnuson Act will assure the continuation of this important process and the continued improvement of our marine fisheries for the greatest benefit to the Nation.

Your invitation requested us to address problems we have experienced with the implementation of the Magnuson Act. Frankly, as some others have indicated today, the problems we face at present are not as large as they were a few years ago. Therefore, our testi-

mony does include comments on certain issues that have been raised by others in the reauthorization discussions today.

My oral testimony will highlight on just a few of those problems and issues that are of particular interest in New York and some of the States.

**The Appointments Process**—The Magnuson Act appropriately includes State fishery management officials as members of regional fishery management councils and authorizes governors to nominate members of the councils. This recognition of the key role that States must have, in partnership with the Federal Government, in managing regional fisheries has been fundamental to the success of the council system.

Failure to retain State fishery management directors as council members and/or changes in the roles of governors in the appointments process would materially affect the states' willingness and ability to participate in the council process and in the success of the Federal fishery management program.

We should point out, Mr. Chairman, that the procedures of the Department of Commerce in the appointment process have caused some considerable difficulty for governors in effectively completing the process. We would urge the Subcommittee to look into the Department of Commerce's procedures and to consider instructing the Department to revise such procedures in the event that you find that those procedures are a deterrent to the nomination and the willingness to accept appointment of qualified and interested persons.

**Cooperative Law Enforcement**—In prior amendments to the Magnuson Act, Congress provided that where States have cooperative law enforcement agreements with the National Marine Fisheries Service, they may share in the proceeds of any penalty recoveries made in enforcement actions pursuant to such agreements. This amendment was a helpful step toward revitalizing State-Federal cooperation in marine fishery law enforcement.

As has been indicated here previously, the States are in an ideal position in terms of having in place an enforcement infrastructure and command structure to successfully and effectively enforce all marine fishery laws. Mending the Magnuson Act to allow further and initial authorization, initial grants to States, to prefund a defined enforcement program, rather than simply providing funds to trickle in as they come from penalty revenue, would assure the success of the amendment Congress adopted a few years ago.

**Regulations in State Waters**—Again, as has been mentioned here, there are certain difficulties arising with respect to Federal Court decisions and interpretations regarding the authority of States to manage fisheries in their waters that also occur in Federal waters. While this has not yet impacted the fisheries in New York, it is an issue that we in New York and elsewhere eye with great concern, and we do encourage the Committee to look into this issue as has been indicated by other witnesses this afternoon.

**Prevention of Overfishing**—A number of advocates of fishery conservation issues are recommending incorporation of a specific definition of overfishing in the Magnuson Act, and clear requirements that management plans specify quantifiable overfishing definitions and management measures which will assure that fisheries

meet such quantified definitions within a defined timeframe. These views would be consistent with assuring that the major provisions of the 602 regulations be incorporated into the Magnuson Act.

New York would support such amendments, but notes further that the current Federal regulations ought to be adequate for this purpose if implemented fully and effectively by councils. An effective expression of congressional support for the substance of these regulations would be most helpful to the councils and their State members as they seek to deal with the problems of overfished fisheries that require significant reduction in fishing mortality in the immediate future.

Lastly, Mr. Chairman, I note that there is a growing concern among New York's commercial fishermen about the appointments process and the equality of representation on the regional fishery management councils. The law is clear that appointments must represent a balancing of commercial, recreational and other fishing interests, but in practice, appointments by the Secretary of Commerce have not always achieved such balance on each council.

Congress should insist that the new Secretary achieve such balance, and in the event that the appointments do not do so, statutory changes may be required in the future.

Again, Mr. Chairman, we thank the Committee for the opportunity to testify.

[The statement of Mr. Colvin can be found at the end of the hearings.]

Mr. MANTON. That concludes the testimony of our last witness. I want to thank all of the witnesses for being with us today. I am sure that the Members have a few questions.

For any of the witnesses, what do you think about individual quotas, so called IQs, and individual transferable quotas, ITQs? Mr. Colvin, you want to handle that one first?

Mr. COLVIN. As a member of the Mid-Atlantic Council, it may be appropriate for me to testify since the council has adopted amendment 8 to the surf clam management plan which does impose individual transferable quotas. I think that, by and large, the process of adopting so-called ITQs in the surf clam fishery was one that was warranted in that fishery at that time. We worked up to it over a period of time in a management program that had clearly defined problems, that were best solved by an ITQ system.

I would be of the opinion, however, Mr. Chairman, that councils should look to the problems of their individual fisheries and where those problems warrant, and only where those problems warrant, institution of an ITQ or equivalent system should then be imposed.

We have heard suggestions that some believe that there should be a broad mandate for ITQs in many of the Nation's commercial fisheries. We would not favor such a broad mandate. We would instead suggest that the councils look to the regional needs and problems of individual fisheries in arriving at that judgment.

Mr. MANTON. Do you take the case-by-case approach?

Mr. COLVIN. Indeed.

Mr. MANTON. Any other of the panelists wish to take a crack at that?

Mr. PERRET. Yes, sir. Thank you, Mr. Chairman. Corky Perret from Louisiana and the Gulf Council. ITQs, limited entry, limited

access, whatever we want to call it, seems to be one of the things that most people on the councils and most councils are looking at these days.

As the previous speaker stated, I think it has got to be looked at on an individual basis and individual fishery. Compounding the problem is, in my opinion, the lack of good data. We still don't know what certain groups of fisherman are taking.

We also, in the Gulf, have fisheries that are on quotas that are balanced between commercial and recreational, yet we may be considering only ITQs for one user group. If you consider for one, to be fair, it should be considered for the other. And I think those are some things that may complicate the problem.

I don't think they cannot be overcome, but I think that serious problem is a lack of good data, what is being caught. We just don't know.

Mr. MANTON. Anybody else?

Mr. ROSEN. Again, the ITQs are part of a whole range of tools that fall into the category of limited entry. The councils need to be free and encouraged to select among these tools. However, in implementation, it is very clear that at least in the State of Texas the only way that these systems will be successfully implemented is through working very closely with the affected industries.

Whether that is the recreational industry or the commercial industry is immaterial. The people who are going to be affected by limited entry need to be at the table creating the system, and the tools themselves I think need to be individualized to fit this situation. The councils need to be given the flexibility to select among those limited entry tools and apply them where appropriate.

So ITQs are not a cure-all. It is one tool among a whole range of ways in which the councils can address some very critical management situations.

Mr. MANTON. Mr. Turner or Mr. Rosier?

Mr. ROSIER. Yes. Thank you, Mr. Chairman. I think it has been very well stated here at the present but I would like to say we are in the process of implementing an ITQ system on halibut and black cod in the North Pacific. And again, that may have been fine for those particular fisheries, but it was a very disruptive process that the council was faced with, certainly associated with making the switch in a common property type fishery to a privately owned fishery.

And that is what you are talking about when you go to an ITQ system. So from our standpoint, I think it has to be an individualized fishery application as far as ITQs are concerned.

Mr. MANTON. Thank you. I would now recognize the Ranking Member, the gentleman from Alaska, Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman. I reluctantly do this, but I mean the two gentlemen sitting side by side, Mr. Turner and Mr. Rosier, I would like to have Mr. Rosier comment on the council makeup, and Mr. Turner respond to it, and I then will have a follow-up question.

Mr. Rosier, would you kindly comment on the so-called unfairness of the terrible, inappropriately unbalanced council that Mr. Turner is complaining about.

Mr. ROSIER. Thank you very much.

Mr. Chairman, from our standpoint, you know, there was a lot of thought that went into the structure of the North Pacific Council when the Magnuson Act was originally structured. And certainly the relationship between Alaska and Washington and Oregon fishermen was recognized at the time that the council was in fact structured.

We feel, of course, that the structure is very good. We feel that there is balance there in terms of the composition. And I think that the numbers, so to speak, for the last four years, on votes by the North Pacific Council kind of speak for themselves, in that only in 14 cases out of over 900 votes did the council actually have a situation in which all of the Alaska representatives were voting together.

So there is quite a few individuals up there on this, I might add. But nevertheless, even out of that—even out of that, those 14, in 11 cases of the 14, the Secretary's representative actually voted with the representatives from Alaska on that particular issue. So it was a situation in which we felt that there was only three votes in which it was a six to five type of vote that was put forth in the North Pacific.

So in our view, I think the numbers speak for themselves in terms of the structure as well as the objectivity of the council up there.

Mr. YOUNG. Well, Mr. Chairman, just from the information of the rest of the members of the Committee, the 905 recorded votes, only 14 times, otherwise 0.3 percent were decided by the six members of the Majority. And in fact, the onshore/offshore decision that some of my good friends in Washington State totally disagree with, was a unanimous vote, Oregon and Washington and Alaska all voting together.

This is a battle, Mrs. Unsoeld, and I have gone through before and I am hoping to avoid it because it is not going anywhere with any senior senator over there, who happens to be the one that has the history background of this issue. I would suggest that we use the "do as the rest of this group has done," including Mr. Turner to a degree, that you concentrate on the weaknesses of the bill, and this is the least of all.

I am more interested in bycatches, I am more interested in how the council is working and the role of the Commerce Secretary, because I strongly believe in the council structure and I think it has worked well. I know it has in the Pacific, Mr. Turner will agree with that. Some of the times I don't agree with what they do. I sometimes think they make a mistake, but that is the way we set it up.

My big interest, as Mr. Rosier says in his testimony, is the waste of the bycatch. And that goes into, I believe, in one page here, something like 2.4 million crab, 100,000 salmon, 1 million pounds of herring were discarded. And this was not caught by the fleet that set forth to catch those species. It was caught by another fleet.

That discard, that waste, somehow has to be addressed, and I hope as time goes by, we will be able to do it because that is the most frightening thing from my standpoint. But I would say, overall, Mr. Chairman, this panel has presented some good points of view.



Number one, it is my time yet, I was here when this bill was passed. And we were, as the gentleman said, I believe, fighting the battles, all of you, with foreign countries. Now we have to discuss it with ourselves. But we can't lose sight, everyone of you agree with this, lose sight of the reason for the bill was the sustained yield of a species.

If we don't do it, I saw it happen in the crab industry, we will see it in the other parts of the industry, and so I do believe you have a chance to work with this Committee. We will come forth with a better position or at least with what we have got. We meddle too much, we will destroy what we may have been able to achieve and that is a huge industry for the State of Alaska, for Washington State, Oregon, California, Texas.

And by the way, you bring in a good point, Mr. Rosen, I want to talk to you individually later on.

Thank you, Mr. Chairman. Mr. Turner is not going to respond, he sat too close to Carl. What are you talking about?

Mr. MANTON. I see you making notes there.

Mr. YOUNG. Jolene can have her chance.

Mr. MANTON. With the time being expired, the Chair recognize the gentlewoman from Washington.

Mrs. UNSOELD. Thank you, Mr. Chairman. I might have been able to restrain myself.

Mr. YOUNG. No way.

Mrs. UNSOELD. And concentrate on the things on which we can share on this, but my colleague from Alaska has triggered a button back here somewhere. Bob, in your testimony, you suggest two additional seats on the North Pacific Council for Washington State would help balance the council and probably resolve some of the controversy surrounding its decisionmaking process.

Could you elaborate on this?

Mr. TURNER. Thank you, Representative Unsoeld.

You know, I thought there are several pathways into this issue. Most of them are mined very heavily. So the one that I have chosen to take is to ask the Subcommittee to take a look at this issue from the underlying public policy view. And, you know, I just disagree with the statement that this is not a problem. There is a lack of public trust in the implementation of this act in some places.

Mr. YOUNG. Would the gentleman yield on that? Where is the lack of trust?

Mrs. UNSOELD. No, I do not care to yield at this point.

Mr. MANTON. The gentlelady has the time. If she wants to yield, she can. If not—

Mr. TURNER. For the sake of avoiding an argument, I will just say that the people that I represent in the city of Seattle, just for the sake of this presentation, do not feel that they are adequately represented in this issue.

But, and let me proceed if I could, that is a chain of issues. It is a chain of issues within the implementation of the act that involves checks and balances. And this act and this Committee has looked at those checks and balances in a number of different places and these issues are before you now.

They involve the role of the Secretary versus the role of the council. They involve the proposal to have an independent oversight of the plan, that is a check and balance issue. They involve the memberships on various councils and they, to a degree, involve the issues about conflict of interest.

In my view, those are all linked to efforts to reestablish public trust in the implementation of the act. As it is applied in the North Pacific, there is an issue there. I am presenting a proposed solution to the issue. I think denying that the issue does not exist does not serve the Subcommittee well.

Mrs. UNSOELD. Mr. Chairman, this Committee, as well as the full House of Representatives, supported a similar proposal during the 1990 reauthorization of the Magnuson Act. Unfortunately, it was dropped by the Senate based in large part on an urgent need to move the drift net provision of the bill.

During debate of this proposal, the critics argued that a change was not necessary because there were no examples of discrimination against Washington interests. I suggest this is not the case, and for the record, bring to the Committee's attention a recent statement by an Alaskan representative on the council since that action in 1990.

"My goal is to close, to the Seattle fleet, all those areas that we closed to the Russians and Japanese." I will add that these are—I will add that these areas are the Federal waters of the EEZ. Quoting again, "It is nothing less than a war, and he is ready to fight."

May I suggest, Mr. Chairman, that a public declaration of war is hardly nondiscriminatory.

Thank you.

Mr. MANTON. Does the gentlelady yield back the balance of her time?

Mrs. UNSOELD. Yes, I do.

Mr. MANTON. I think at this point, we have got about five minutes left to vote, so we are going to break for about ten minutes and we will be back and take care of the rest of the questions.

[Recess.]

Mr. LANCASTER. [Presiding] In the interest of time, the Chairman asked that I reconvene the Committee and ask my questions while he is going to the Floor to vote. Probably my five minutes will be up about the time he gets back.

One of the comments in Mr. Perret's statement was that fish and fisheries know no political boundaries, which raises an issue for North Carolina which has a number of fisheries, in particular, that are very important to us, large summer flounder fishery, which is controlled by the North Atlantic, but yet North Carolina is not represented on that council.

I wonder, first of all, Mr. Turner, if you might comment on how it is that Washington is able to sit on two councils, and what the appropriate criteria might be for determining the assignment of States to more than one council, taking into account the situation that we have in North Carolina where in particular one fishery, but several others not quite as important as that one, are outside of the jurisdiction of any council on which North Carolinians sit?

Mr. TURNER. I volunteered to go down one of these membership roads, but a second one might be asking me to do more than I can

withstand. Again, I would like to emphasize the underlying public policy issue. These are allocation issues, the decisions of the council have great impact on people who are involved in these fisheries. And those have winners and losers, as has been said.

The people who are adversely affected by these government decisions need to feel that they have been treated fairly. They need to feel like this process is one that is instilled with the public trust. And if they don't believe that they have been properly represented or if they in fact are not properly represented, then they aren't going to have that public trust and they are going to be adversely affected.

And it is the role of government to provide that trust. It is the role of the Magnuson Act to do that. I don't know the specifics of the example you gave, but if there are fishers who are affected by the decisions who are not in fact represented, then they are going to feel very adversely affected.

The outcome of the decisions can be the same, but with proper representation the perceptions of those affected by the decisions can be dramatically different. In deference to Alaska, I do have a great respect for the regional importance of the councils, in the States rights and the States authorities and the States interests in seeing the economic value of their local fisheries contribute to their region.

But on the other hand, there is a national interest and there are other interests that are represented in those fisheries and they need to be represented in some way on the council so that the decisions of the council have integrity. Integrity is provided by having that public trust.

Mr. LANCASTER. Mr. Perret, since you were the one that specifically mentioned this problem in your statement, I wonder if you would comment, and Mr. Colvin, I welcome your comments on this issue as well.

Mr. PERRET. Well, first off, sir, in response to council representation, on the Gulf Council, Florida has one vote, or Florida is represented on the Gulf Council as well as South Atlantic because of the coastline. They are on the Atlantic as well as the Gulf. My reference to fish and fish not recognizing political boundaries is more, so relative to the north-south movement or State-Federal jurisdiction.

In the Gulf of Mexico, with few exceptions, most of the species are estuarine dependent. They spend a certain part of their life cycle in the estuaries. Many of the species are regulated by State plans, in jurisdictional plans with the Commission—the Council is not involved.

One of the largest fisheries in this country, the Menhaden fishery, is not under a Federal plan. Blue crab fishery is not under a Federal plan. And that was the way I was describing the movement between different political entities.

Mr. MANTON. Mr. Colvin?

Mr. COLVIN. Mr. Chairman, the issues that you raise about the fisheries of North Carolina is one that has been discussed to some degree among members of the Mid-Atlantic Council, of which I am one, and fishermen and representatives of the State of North Caro-

lina. The—I think that the issue is an important one for some discussion.

We have kind of a biogeographic situation involving the Continental Shelf from Cape Hatteras north to at least Long Island if not Cape Cod, which is a single biogeographic region. It is well recognized that the fisheries of this area and the fishermen in this area freely intermingle together. There is also literally no doubt that the commercial fisherman of North Carolina and most especially the trawl fishermen in North Carolina are major players in that regional fishery.

I think that most people in the Mid-Atlantic region recognize the importance of the North Carolina fisheries, and I think Mr. Turner put it well. If there is a need and a perception from a public policy perspective to accommodate that very legitimate interest and concern of that major player on the Mid-Atlantic Council, then so be it. And I don't think that most people on the Mid-Atlantic Council and most members on the Mid-Atlantic Council have an objection to that.

I will also say though, in just blowing our horn a tiny little bit, that I think that the Mid-Atlantic Council has done a good job, as good a job as it can do within the present system, of reaching out to and hearing the fishermen from North Carolina and their State representatives, incorporating members of the South Atlantic Council as members of our Committees, as voting members of our Committees on issues like summer flounder that are of great importance to them. So within the structure that we have, I think we are effective.

Mr. LANCASTER. I wonder if one way that we might rationalize the decision to place North Carolinians on two councils as was done with Florida, would be to recognize that Cape Hatteras is every bit as distinctive a geographic and geologic and biologic difference as Gulf Coast versus Atlantic Coast, as you have indicated the Continental Shelf, and that you might very well have a fishery that had the dividing line at Hatteras. With those going to the South and the Mid-Atlantic, I would then place two North Carolinians on the council as is the case with Florida.

Mr. COLVIN. Mr. Chairman, I think you would find that most fishery managers and fishery scientists, and for that matter, marine ecologists would agree with that interpretation. I think it would be further enhanced as an argument if one looked at the fisheries themselves, which have developed in the northern part of North Carolina with its winter trawl fishery, and now its mobile trawl fleet, in response to the fisheries in the entire region from Hatteras north.

Mr. LANCASTER. Thank you.

Mr. Chairman, I have a couple of other questions that, on the second round, I might be permitted to ask if I could.

Thank you.

Mr. MANTON. [Presiding] Yes, sir. The chair will recognize Mr. Taylor for some questions.

Mr. TAYLOR. Thank you, Mr. Chairman, and I really hate to miss out on the Washington-Alaska brawl. Times are hard and I had to give up cable and I can't get Wrestlemania anymore, but I did have

a couple questions, mostly with regard to the Gulf of Mexico. And I would like to open up to both Mr. Rosen and Mr. Perret.

I noticed that you mentioned conservation, you mentioned management, but a continual problem that I see is I just don't see anybody out there trying to enhance the resource. I see them slowing down the decline of the resource, but no one trying to enhance it. I was wondering what steps are being taken to do just that.

A second question is, since directed to Mr. Rosen, I have been told—and I hope you will correct me if I am incorrect—that Texas has somehow extended the closure of their shrimp season all the way out to the 200-mile limit.

Again, I hear a lot of crazy things from fishermen on occasions, but I was wondering if that is true. Where is the justification for that since it certainly affects a lot of people outside the State of Texas, the processors in Louisiana and Mississippi and Alabama in particular.

If you would, let's get to the resource first, and then the Texas closure.

Mr. PERRET. Congressman Taylor, thank you. Insofar as the resource first, especially again in shallow water species, estuarine dependent species, habitat is definitely the key. One of the reasons Louisiana led the Nation in seafood production up until the late 1980's, when our friends from Alaska did get to first place, we are now in second, but it is because of the habitat.

Now, Louisiana contains something like about 40 percent of the remaining coastal wetlands in the continental United States, but we are losing the greatest percentage of these wetlands. Insofar as enhancement, we are trying to enhance the habitat by controlled freshwater introduction to improve habitat, to build additional marshland.

When man leveed the Mississippi River down to South Louisiana, we no longer get the annual flows which provided the silt which provided the nutrients to our marshes. That is cut off. So from the habitat aspect, we are attempting to minimize and in those cases where we are able to when funds are available, and this is a very, very costly process. We are trying to enhance that habitat to ensure that the fishery will be viable for many additional years to come.

Additionally, we have done some work with artificial reefs. We have 25, if I am not mistaken, structures that we placed down. And there are two schools of thought on artificial reef. Do they merely concentrate existing fish or do they provide additional habitat which makes for greater propagation of fish?

All we know is it is working. About 80 percent of the offshore fishermen in Louisiana like to concentrate around the offshore oil and gas structures, sulfur structures and things of that sort. So the industry with these facilities offshore, by law, they must remove them. We now have worked out a system that, if they are willing to place them in our designated areas to create habitat, they get a savings. And a certain amount of revenue comes to the State, to the Department to operate that artificial reef fund.

So that is two issues I can give you. We have done some hatchery and some relieve work-release work at times. I think fish hatcheries and stocking the fish is one of the last-ditch efforts. If you have

got a healthy habitat, you should have a pretty good resource. But it has been used, it has been used successfully, and that is some of the things that are being done.

Thank you.

Mr. TAYLOR. Mr. Rosen.

Mr. ROSEN. The kind of enhancements you are talking about are primarily activities that take place in State waters. Mr. Perret mentioned, that basically all of the Gulf Coast fisheries are estuarine dependent, therefore part of their life cycle is spent within the State zone. And that is where we can have our greatest effect on increasing production of fisheries.

Texas is doing a host of activities that are specifically directed toward fishery enhancement and fishery conservation. There are different activities for fin fish than for shrimp, crabs, oysters and such. But in the area of fin fish, the Texas Parks and Wildlife Commission has worked long and hard toward the elimination of what were considered by the Commission to be harmful fishing practices, primarily some of the netting practices.

This has helped in allowing fin fish stocks to rebound. We are seeing some of the largest concentrations of fish in memory along the Texas coast now as these stocks increase. We are looking at this within the redfish and in the spotted sea trout fisheries.

In addition to that, we are one of the States that has gone beyond just experimenting with artificial enhancement techniques through hatcheries. We have state-of-the-art hatchery facilities that are producing fish. We are in the process of developing further cooperative projects with municipal jurisdictions, cities, corporate entities, and with conservation organizations all in concert with the State Government. We are constructing new enhancement facilities, new hatcheries.

We are now looking at some of the first evidence of the effectiveness of our hatcheries. In areas where stocking has occurred, we are seeing up to 20 percent of the stocks that are there now, composed of fish that we have produced in our hatchery system.

In addition to that, we are working very hard in coastal habitat restoration. Some of our biggest initiatives, in fact some of the biggest coastal restoration initiatives in the country, are taking place along the Texas coast.

The salt bayou project is one that received, I think, one of the largest grants under the Wallop-Breaux fund, specifically the Breaux amendment to the Federal aid program for wetlands. And this is being used in the upper coast of Texas. We have a mid-coast project that we are working on now that would restore coastal habitat there as well.

The intercoastal waterway has sliced through coastal Texas. Various drainage canals associated with that waterway have impacted the coast along Texas tremendously. We have eroding marsh. Just as Louisiana has eroding marsh, we have eroding marsh. As Louisiana is working to restore the integrity of those coastal marsh systems, so is the State of Texas.

But again, this is all being done in States' waters and is really apart from the council process. The council comes into play by helping in identifying projects that would degrade the fishery; Federal actions, Federal permitting activities, Federal projects and

such which could further degrade coastal ecosystems and affect fisheries. The council can play a role in serving to protect its own interests by working through the National Marine Fishery Service and with permitting agencies such as the Corps of Engineers to ensure that the projects conducted along the coast are done in a way that is environmentally benign, or if possible, even provide for some coastal fishery enhancement.

The Corps of Engineers working with the Parks and Wildlife Department has come up with some very innovative ways to help restore coastal Texas, so the Corps of Engineers can be a strong player in coastal restoration.

Mr. TAYLOR. If you would, comment on the report that I have had from some Mississippi fishermen that the Texas closure goes all the way out.

Mr. ROSEN. OK. The Texas closure is essentially a time and area closure. It extends generally two months. It is out to 100 miles. There is discussion about how far it should extend. Every year there seems to be such discussion. This is something that is developed cooperatively with industry.

Our staff monitors constantly the size of—this is specific to shrimp, by the way—our staff monitors the size of shrimp and make an estimate of when to close the offshore season, and when to open it. Generally it closes the 15th of May, generally it opens around the 15th of July. And this is beneficial in most years to the industry because it allows for the shrimp to get larger before harvesting resumes.

And when they harvest the shrimp, the shrimp are worth more so there is an economic advantage in most years, but not in all years. Last year was an unusual year because of rainfall patterns. The shrimp didn't do what they normally do. So there were some concerns expressed by some about people on the upper coast getting an unfair advantage over people on the lower coast.

Usually, the upper coast shrimpers complain that the lower coast people have an advantage over the upper cost and this goes back and forth. But overall, this time and area closure is generally supported by the industry and in fact was developed in concert with the industry several years ago.

Mr. TAYLOR. Mr. Chairman, one follow-up question. Mr. Lancaster and I are somewhat perplexed. Where does Texas get the authority, is it through the Magnuson Act, to close the waters out to 100 miles?

Mr. LANCASTER. Two.

Mr. PERRET. 200. If I may. Congressman Taylor, this is part of the Gulf of Mexico shrimp management plan. One of the measures was an offshore closure with the State of Texas. This is—you think you had an Alaska-Washington fight? You have got a Texas-Louisiana. I fought it from day one. The State of Louisiana filed suit in Federal Court.

I learned one thing about that, it is hard to beat the Federal Government in Federal Court. We lost. And that was in 1980. And that closure has been in effect every year since—on two years, it was out to 15 miles only, but all other years was out to 200. Texas territorial waters is out to nine miles. They close for a certain



period of time and this is a cooperative closure through the shrimp fishery management plan.

I tried to amend it this year to only make the closure from about, I don't know, the geography of Texas that well, but from about the middle part of the State south to the Texas-Mexican border. I always lose by one vote from day one. The council plan—we have 17 voting members. I lost on the initial vote nine to eight. We filed suit in Federal Court, we have lost. I tried all sorts of amendments. I lose by one vote every time.

Mr. TAYLOR. So—if you don't mind, Mr. Chairman, while we are on a roll, Mr. Manton.

Mr. PERRET. And Mississippi delegates this past year were all with Louisiana.

Mr. MANTON. I am going to disregard the red light, but I would like us to finish and maybe get to this vote and call it a day if we could.

Mr. TAYLOR. Where did this vote take place in the Gulf Council? The gulf Council is created by the Magnuson Act?

Mr. PERRET. That is correct.

Mr. TAYLOR. An amendment to the Magnuson Act could resolve this? Not necessarily favorable in the eyes of our esteemed colleagues from Texas. From what I understand, it is not even unanimous amongst Texas. The Northern Texans feel like the drift of the Gulf of Mexico, since shrimp don't swim against the current, tends to bring them down to the Brownsville area, so Brownsville is the big winner versus everyone else; is that correct?

Mr. ROSEN. In most years, we hear that. The concept here is that they don't fish on the little shrimp, we let them get a little bit of size to them prior to reopening the fishery. And again this is something that the industry has been generally supportive of. But as I mentioned, it varies by year as to who feels advantaged, which group has more of an advantage than the other. And in some years, there may be a disadvantage to the closure overall.

Mr. TAYLOR. I had a note from the former chief counsel to this Committee which says that it is actually the feds who closed the waters based on the representation of the Gulf Council. Is that correct?

Mr. ROSEN. That is correct. The State of Texas can't close the waters beyond nine miles.

Mr. TAYLOR. OK. Thank you, Mr. Chairman.

Mr. MANTON. Mr. Lancaster, you wanted a second round?

Mr. LANCASTER. Mr. Chairman, I would like to broach two issues. I will go ahead and put both issues out in case I have to leave to go make the vote before they have been answered. And then I can obtain the answers from the record.

First of all, some industry observers feel that in managing the resources, the council has often selected options that are overly disruptive of the industry while not justifiable on conservation bases. I wonder if you would comment on whether or not council should be required to identify the least restrictive plans and then justify restrictions beyond that point on sound conservation bases.

And then secondly, and this in particular goes to you, Mr. Colvin, because of your expertise in the area, there has been discussion about the makeup of the councils with some thinking that the

councils now are too representative of commercial and sports fishermen who have conflicts of interest always at stake in these decisions, and that the makeup of the councils should be less reflective of industry.

But then others say that the councils have not been adequately representing specific interests and that there should be specific seats held for specific fishing interests, whether sports or commercial.

I wonder if the panel would comment on how we should designate seats on the council, and whether or not there is a problem with conflicts.

Mr. TURNER. Well, I will jump in for the latter point first, because I think it goes along with my earlier comments about public trust again, and the system of checks and balances that was built into the Magnuson Act, and whether people who are affected by the decisions feel that they were adequately represented.

The resolution or the specific recommendation, if you were looking for one in response to the suggestion about who sits on the council or whether major reallocation should be prescribed or proscribed in the act, it seems to me fit into a wide array of proposals that deal with checks and balances.

There is a suggestion that—the question about whether we take disruptive options is a question about checks and balances, whether there is empowered in the council too much authority to adversely affect an interest.

I think that that can be the case, if an interest has not been well served or heard. But if the interest is well served or heard, then I think that a dramatic reallocation is possible in some cases. So I don't believe it is appropriate to segregate all of the issues that have been presented to the council or presented to the Subcommittee and try to deal with each singly.

Frankly, you know, we have pendulums in issues and this pendulum is sitting in one place, and if you were to take action on each and every proposal and stack them all up, you well may serve to send this pendulum in the other direction. And I would caution against that.

Mr. LANCASTER. While we are on that subject, would someone else like to comment?

Mr. COLVIN. I think that Mr. Turner's remarks about the pendulum are well-taken. Right now, as my testimony indicated, there is a considerable concern in New York State and in the Mid-Atlantic region that commercial fishermen are underrepresented in the New York delegation to the Mid-Atlantic Council and on the council at large.

I became a council member in January of 1983 when I assumed my present duties. At that time, there were meetings with delegates of recreational fisheries interests in New York who expressed strong concerns that a recreational person from New York had never had a seat on the Mid-Atlantic Council. So things have turned around and they will turn again.

My belief is that Congress has correctly advised the Secretary that they want to see balanced representation of interests on councils. I think that that advice can be strengthened by saying we don't want to see balanced representation nationally, we want to

see a concerted effort by the Secretary to achieve general balance, not numeric balance, but general balance on each council consistent with the issue that Mr. Turner has brought up a couple of times about having an acceptance and a recognition that the decisionmaking process is legitimate in the various councils. So long as that oversight and the force of your scrutiny is maintained, I think that the law as written can work.

But we do have this concern. And specifically in the Mid-Atlantic Council, I can tell you that we are presently on a council with 19 voting members, three of whom and only three of whom have a commercial background. Every time we have a dialog at a council meeting that gets intense on the issue of regulating commercial fishermen and reducing their catch, the public discussion is burdened with the comment, "How can this council tell commercial fishermen what to do when there are only three of us and then not active fishermen at that on the council?" We need to get around that problem.

Mr. LANCASTER. Would anyone like to comment before I run on the other issue of whether or not the decisions should follow the least disruptive route, and when it goes beyond that point, be justified on sound conservation bases?

Mr. ROSIER. I would like to comment on that one because I think that the North Pacific Council probably epitomizes some of the points that you may be trying to get at here. We heard Mr. Rosen talk about the shrimp didn't do what they were supposed to have done, and as a result, there was a need to make some changes.

And having been associated with management of these kind of resources for approximately 30-plus years, I find that that stability that the public and the user groups are frequently looking at and the use of those resources is an awfully hard commodity to come by.

And to mandate, mandate something that says that it is going to be the least disruptive, I think would be a disservice to the councils, quite frankly. On the second question, in terms of the membership, I think everyone is looking for balance, but I think that it is a situation in which you could probably add to the councils almost on an annual basis some different interest group.

Certainly in terms of the Alaska Council, it is not only the State of Washington that is looking for additional seats, it is also some of the environmental groups. They are as concerned over potential waste and bycatch and this type of thing as an ecosystem type of problem, as some of the—some of the other interest groups. So I would say, proceed very cautiously in that regard.

Thank you.

Mr. LANCASTER. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. MANTON. That concludes our hearing for the day. We thank all the witnesses for being with us.

I remind the Members we have five minutes to vote. I would just like, before we break, to make an announcement. I don't know if he's in the room. Bill Price will be our detailee to the Committee from NMFS, and Mike Stemple, who is over here on my right—Mike, stand up—from Fisheries and Wildlife Service, as a temporary detailee.

And Charlie Schechter who has been an intern with us, I think today or this week is your last week. Thank you for all your help and we wish you luck in your endeavors.

[Whereupon, at 4:56 p.m., the Subcommittee was adjourned, and the following was submitted for the record:]

TESTIMONY OF  
DIANA H. JOSEPHSON  
DEPUTY UNDER SECRETARY  
FOR OCEANS AND ATMOSPHERE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
U.S. HOUSE OF REPRESENTATIVES

MARCH 3, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Diana Josephson. I am the Deputy Under Secretary for Oceans and Atmosphere, U.S. Department of Commerce. I appreciate the opportunity to testify about the Magnuson Fishery Conservation and Management Act (the Act). Since the President has not submitted his 1994 budget, I am not at this time able to comment on the authorization levels in H.R. 780.

In the sixteen years since the Act brought under United States jurisdiction the vast fishery resources of the 200-mile exclusive economic zone (EEZ), Congress' vision of a regionally-based Federal fishery management system has been brought to fruition. The eight Regional Fishery Management Councils, in cooperation with NOAA and the state fishery agencies, have prepared thirty-three fishery management plans (FMPs) that have been approved by the Secretary of Commerce. Seven other FMPs are currently under development. Most of the Nation's important commercial and recreational marine fisheries that predominantly occur in the U.S. EEZ are now, or soon will be, under Federal management.

One of the initial objectives of the Act was to impose strict conservation measures on the activities of the vast foreign fishing fleets that had decimated our fishery resources. A second priority was to provide the domestic fishing industry with first preference to the resources within the U.S. EEZ. I am very pleased to report that those two initial objectives have been fully realized. During 1992, there were no foreign fishing operations within the U.S. EEZ. Compared to 1976, the U.S. domestic harvest has nearly doubled.

Despite these achievements, the Nation's fisheries are at a crossroads. A 1992 study by the National Marine Fisheries Service (NMFS) concluded that, of the fishery stocks that can be assessed, 61 stocks are fully utilized, 67 stocks are overutilized, and 28 stocks are underutilized. The status of 80 stocks remains unknown. That study suggests that we can do better.

NMFS economists estimate that the seafood industry has the potential to produce nearly \$3 billion in additional growth to the U.S. economy. The recreational fishing industry also has significant potential for additional economic growth. These opportunities represent literally hundreds of thousands of potential new jobs and a significant contribution to restoring the Nation's economy. That is the challenge before us.

The Department has already begun to consider changes to the Act. We are reviewing the many suggestions that have been put forward by industry, the general public, the Councils and from within the Executive branch.

NOAA has been following an open, participatory process to develop a proposal. We have twice met publicly with our Marine Fisheries Advisory Committee, published letters requesting comments, and met with the chairmen and executive directors of the Fishery Management Councils. This process, however, is not yet complete. All of the Councils have not met to consider the issues and provide us with their views.

Mr. Chairman, President Clinton announced his intention to nominate Dr. James Baker and Mr. Douglas Hall to be the next Under Secretary and Assistant Secretary for Oceans and Atmosphere. As the new NOAA leadership comes aboard, we will be taking a hard look at each of the many suggestions for amendments. As was the case with the original enactment, NOAA would like to work with the staff of the Subcommittee on Fisheries and the full Committee to identify the most pressing issues that should be addressed by legislation.

Once this process has been completed and the Administration has formulated its views, we would like to return and testify on the need for any substantive changes to the Act.

Mr. Chairman, this concludes my testimony. Thank you very much for the opportunity to appear before you today. I would be pleased to respond to any questions either you or the members of the Subcommittee may have.



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

APR 23 1993

The Honorable Thomas J. Manton  
Chairman, Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries  
House of Representatives  
Washington, D.C. 20515-3207

Dear Mr. Chairman:

Enclosed are the National Oceanic and Atmospheric Administration's responses to questions received from the Subcommittee as a follow-up to its March 3, 1993 hearing concerning the Magnuson Fishery Conservation and Management Act.

If you or your colleagues have any further questions, please contact James Truesdale at (202) 482-4981.

Sincerely,

*Diana H. Josephson*  
Diana H. Josephson  
Acting Under Secretary  
for Oceans and Atmosphere

Enclosure

THE ADMINISTRATOR





**FOLLOW-UP QUESTIONS FOR DIANA JOSEPHSON  
BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
U.S. HOUSE OF REPRESENTATIVES  
MARCH 3, 1993**

**Question 1: Please describe the Magnuson Act process.**

**Answer:** The Magnuson Act process for the development and implementation of fishery management plans (FMPs) or amendments involves four primary phases. Phase 1 involves planning and scoping activities. These include identification of the problem, the species involved, the fishermen or other participants affected, environmental issues, alternate solutions, necessary documentation, required staff or others to prepare documents, and general time frame for preparation.

Phase 2 involves the actual preparation of the FMP or amendment and any supporting documents, including the Environmental Impact Statement, Regulatory Impact Review, Regulatory Flexibility Analysis, Paperwork Reduction Act documentation, Coastal Zone Management consistency determination, Endangered Species Act Section 7 consultation, and proposed regulations.

Phase 3 involves the review of the draft FMP and other documents by the public (including Council-sponsored public hearings throughout the region), and Federal or State agencies. After adjustment for comments received, the Council adopts the final FMP and transmits it with proposed regulations to the Secretary.

Phase 4 consists of the final review and approval/disapproval/partial disapproval decision by the Secretary. The review involves a 60-day public comment period, and an evaluation by the Secretary that the proposed management action is consistent with the seven national standards and other provisions of the Magnuson Act, as well as the requirements of other applicable law. Key events in the Secretarial review process, which commences 5 days after the Council transmits the FMP package to the Secretary, are as follows:

Day 1 - Publish a notice of availability of the FMP in the Federal Register, and start a 60-day public comment period on the FMP.

Day 15 - Publish the proposed rule in the Federal Register, including a provision for a 45-day public comment period on the proposed rule.

Day 60 - Public comment period ends, and NMFS begins consideration of public/Federal/State comments for approval/disapproval decision.

Day 95 - Secretary is required to approve, disapprove or partially disapprove an FMP/amendment. If disapproved, the Council must be notified by the close of business; failure to notify the Council results in the FMP's automatic approval.

Day 110 - Final regulations are filed with the Federal Register, and a 30-day Administrative Procedure Act delayed-effectiveness period begins.

Day 140 - Final regulations become effective.

Two types of regulatory actions that do not go through the normal FMP process are regulatory amendments and inseason actions. A regulatory amendment differs from an adjustment to an FMP because it amends, rather than implements, a regulation. A regulatory amendment is used to clarify Council intent or to interpret broad terms contained in approved FMPs; it may be used to implement a portion of an approved FMP that was initially reserved and the Council now desires to implement. Regulatory amendments must go through the normal rulemaking procedure, including OMB review, but are not subject to the statutory date/deadlines noted above. Time saved in the process is derived from the fact that the change was anticipated within the scope of the FMP, thus the comment period can be 15 to 30 days under the Administrative Procedure Act instead of the 45 days required under the Magnuson Act.

Inseason actions are regulatory actions that implement management measures within the scope and criteria established by the FMP. These are specific, well-defined management actions which are restricted to a limited range of actions defined in the FMP. When the criteria or conditions specified in the FMP are met, the prescribed management action can be implemented without further public comment through notice in the Federal Register. For example, once a harvest quota for a particular species is reached, fishing for that species will cease upon notification of the fishing industry. Because such actions were previously discussed with the public, fishermen can anticipate the implementation of the action and plan accordingly as harvests approach the quota limit.

**Question 2: As currently written and implemented, where is the Magnuson Act taking us?**

**Answer:** The Magnuson Act provided the tools to accomplish what, at the time of its enactment, was the primary goal -- the elimination of the foreign offshore fisheries and Americanization of the fisheries within the 200-mile exclusive economic zone (EEZ). Achievement of that goal spawned tremendous growth and overcapitalization of U.S. fishing fleets, and resulted in overfishing by U.S. citizens of many of the Nation's most important fish stocks.

Where 10 to 15 years ago allocations to foreign nations dominated our management decisions, today our concerns are focused on rebuilding depleted stocks, maintaining fully utilized stocks, and overseeing allocations among many competing U.S. fishermen. Because the number of fishermen (harvesting units) competing for the resource and harvesting capacity has grown dramatically, and the available stocks have been reduced correspondingly, we are discussing, in many cases, allocation of relatively small amounts. There are some fisheries that now open and close on the same day.

As noted previously, the Magnuson Act fisheries management process, combined with the requirements of other applicable law, is extremely complicated. We are carefully reviewing the many issues involved in reauthorization of the Magnuson Act and will be providing our views.

**Question 3: Will we see small-family operators "squeezed" from the market and replaced by large corporate interests?**

**Answer:** The fisheries are beset by significant problems of overfishing and overcapitalization that reduce the economic productivity of the fleets and result in inefficient operations. Fisheries, like agriculture, are driven by market forces and competition. Rising costs act against the small operator and favor larger operations that can offset those increases through economies of scale and flexibility of operations. Allowing fishermen to operate in an open-access environment generally has worked to develop many fisheries, but also creates incentives to catch as much as possible in the shortest period of time without regard to the future condition of the resource. Limited-access programs that allow market forces to match harvesting capacity with the amount of fish that remains available for harvest on a sustained basis is one approach for addressing this situation. Two Individual Transferable Quota (ITQ) programs are currently in place (Surf Clam/Ocean Quahog, and Wreckfish) and numerous others are under consideration. The amount of a quota share allocated to each individual has been initially determined based on the catch histories of each fisherman.

Small operators under an ITQ system are assured a certain, continuing percentage of the total allowable harvest, regardless of the activities of larger operators. Shares are transferable, i.e., can be sold or leased, which allows share holders to operate at a status quo level, to purchase additional shares, or to sell shares to obtain a return on investment and acquire a financial basis to move to another fishery or to leave the fisheries to pursue other endeavors. Such systems are capable of protecting the small operators' interests.

Some Councils have already taken the initiative under a limited-entry program to limit the quota shares that any individual or

entity may possess in an effort to maintain competition in the industry and provide a measure of protection for small entities. A recently approved management program (not yet implemented) for the FMPs for Pacific Halibut Fisheries, the Groundfish of the Gulf of Alaska, and the Groundfish of the Bering Sea and Aleutian Islands includes a number of such provisions in a proposed limited access program. The program, for example, provides that no person, individually or collectively, would be able to use an amount of sablefish quota share greater than 1 percent of the combined total fixed gear total allowable catch.

**Question 4: Will we see a growth in sportfishing harvests, with reductions in the commercial take? Are such changes in the Nation's best interest?**

**Answer:** For the next 10 to 15 years, NOAA does not generally anticipate a net reduction in sportfish or commercial harvests; rather we expect increased harvests in both sectors. Many fisheries are currently overfished, and NOAA has established the rebuilding of overfished marine fisheries as one of its primary goals. Better data, better scientific analyses and evaluations, and better management programs can be expected to improve the condition of the stocks. Although this will not be an easy goal to attain, estimates indicate that the recent average yield of U.S. catches of 5.0 million tons from all stocks could be increased to their long-term potential yield of 7.7 million tons -- an increase of about 54 percent. Successful increases in the stocks would likely expand both commercial and sportfish harvests in all areas of the country. Increased harvests will benefit the Nation by increasing productivity, reducing reliance on imported products, significantly increasing jobs for all sectors of the fishing industry, and improving the fishing opportunities and experience for both recreational fishermen and ecotourism industries (e.g., glass-bottom boats and scuba diving).

Notwithstanding the above, the Councils, as stewards of the Nation's fish resources, must be responsive to the needs of all interested and affected citizens. The Magnuson Act does provide for allocations among user groups. The guidelines for FMPs (50 CFR Part 602), pertaining to national standard 4, provide that an FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the optimum yield. Any allocation, whether for sport or commercial fishermen, must satisfy the test that it be fair and equitable to all fishermen, be reasonably calculated to promote conservation and be carried out in such a manner that no particular entity acquires an excessive share of such privilege.

**Question 5: If not, what sort of policy changes should Congress consider to ensure that the Magnuson Act will more effectively mandate fishery management and conservation in the National interest?**

Answer: In consultation with the Fishery Management Councils, the fishing industry, and other interested parties, we are considering possible recommendations for improvement of the Magnuson Act. We expect to provide the Committee with a full set of proposals that are intended to address the realities of the fisheries.

**Question 6: What changes in the Magnuson Act, if any, might you suggest to ensure the consumer is guaranteed a plentiful supply of safe, wholesome seafood?**

Answer: As noted in our answer to question 5, we expect to provide the Committee with our recommended improvements of the Magnuson Act. Any suggestions for revising the authorities of the Act to ensure a plentiful supply of wholesome seafood would be provided at that time.

**Question 7: It has been suggested that if an FMP leads to the displacement of historic participants, then the Federal government should provide some adjustment assistance for those displaced persons. How do we define "historic participants" and what kind of assistance might be appropriate?**

Answer: The concept of historic participation in a fishery is one that is increasingly implicated under FMPs when a moratorium or other limited-access program is proposed. There are many formulas used to define eligibility as a historic participant, and wide variation in evidence acceptable as proof of eligibility including prior federal or state permits and licenses, documented landings of product, "fish tickets," dealer/processor weigh-out sheets, IRS returns, and fishermen's logbooks. Historic participation by the recreational industry sector (e.g., charter boats, party boats, "whale watching," and glass-bottom boats) may also be important in the definition. Difficulties include confused vessel ownership, non-owner (e.g., hired skipper) participation, incomplete or inaccurate federal or state data bases, and inaccurate or unavailable processor information. A major question is whether, for purposes of inclusion in federal financial assistance plans, participation should extend to processors, dock managers, dealers, brokers, shippers, and others dependent on a fishery. These and other factors would have to be considered in developing any assistance program.

Potential approaches include: direct loans or loan guarantees; operating subsidies supported through a tax on catches; vessel/license buy-back programs; tax relief through credits or deferment; incentives to move into underutilized fisheries; retraining; ownership of access rights; and ownership of harvest rights. However, the budget implications of any assistance program would have to be considered in light of the pressing need to reduce the Federal deficit.

**Question 8:** Is it reasonable to say that those who profit from the reduction in overcapacity (i.e. those remaining in the industry) should pay the cost of compensating those driven from the fisheries?

**Answer:** We are looking at many complex issues associated with the Magnuson Act, including this question. We expect to provide our views concerning the need for substantive changes to the Act.

**Question 9:** It has been suggested that the Council member from the regional NMFS office should be a non-voting member of a Council and that the regional Fish and Wildlife Service representative should be given a vote. What are the merits, if any, of this proposal?

**Answer:** We do not see merit in this proposal. The 94th Congress, after extensive deliberations, retained a provision that the Regional Director, NMFS, for the geographic area concerned, would serve as a voting member of that Regional Fishery Management Council. Having Regional Directors serve as voting members provides a voice for national marine fisheries and regulatory policies in the development of FMPs, similar to the type of representation provided for each affected state. But, by virtue of having only one vote on a Council, Congress ensured that the Federal role is not one of unusual authority and that the Regional Director does not control a Council's decisions. We believe this approach works.

The 94th Congress also considered a provision for designating Regional or Area Directors of the Fish and Wildlife Service (FWS), or their designees, as voting members. However, that provision was dropped in the final version and Congress elected to designate them as nonvoting members together with representatives of the State Department, Coast Guard and the Executive Directors of the Marine Fisheries Commissions.

The extent of FWS participation in the Council process has varied by Region. Except where management responsibility may be shared with NMFS, we know of no circumstance that would suggest providing voting membership for representatives of the FWS, much less substituting FWS representation for the NMFS Regional Director. As nonvoting members, FWS representatives have the opportunity to assist the Councils with regard to any situations in which the FWS may have an interest.

**Question 10:** A problem often raised is the lack of concrete data on fisheries. A later witness will describe how the Mid-Atlantic Council tried to gather information through logbooks and how NMFS prevented that because of the Paperwork Reduction Act.

Please address the appropriateness of gathering data through logbook entries and whether the Paperwork Act or other regulations hinder this approach?

Answer: The mandatory vessel logbook requirements for commercial fishermen and charter/party boat fishermen that were proposed in Amendment 2 to the FMP for summer flounder were disapproved by the Secretary of Commerce. We support the concept of mandatory logbooks because they improve the accuracy of commercial landings data that are necessary to determine when individual state quotas for summer flounder have been taken, thereby closing the fishery in that state. However, as stated in the final rule, the logbook provision was disapproved because it would have duplicated a consolidated reporting system that was being developed by the Northeast Fisheries Center for all Northeast region fisheries, and was expected to be implemented in 1994. The Paperwork Reduction Act was not a direct factor in the disapproval of the provision in Amendment 2.

The Mid-Atlantic Fishery Management Council has resubmitted the requirement for mandatory vessel logbooks in February, 1993, requesting that the requirement be implemented January 1, 1994. The 60-day Secretarial review period for the amendment began on February 24, 1993.

**Question 11: What is the status of the shrimp bycatch study mandated by the recent amendments to the Magnuson Act? Do we need to extend the time to complete that study?**

Answer: Although many projects under the three-year shrimp bycatch study did not begin until late 1992, when special funding became available, there is now much information that can be used to develop appropriate management measures. In December 1993, the Gulf of Mexico Fishery Management Council will use preliminary results from project studies, including assessments of the status and condition of overfished nontarget stocks, the magnitude of fishing mortality, and the status of gear development and alternative fishing methods in its deliberations on red snapper and shrimp bycatch management. Substantial progress has been made toward reducing bycatch, including the development of at least four bycatch reduction devices that show promise for reducing incidental take of finfish. NMFS believes that the close and continuing collaboration between industry and government will resolve the bycatch problem and that additional time to complete the study is not required.

**Question 12: I have a document dated February 22, 1993 and labelled "Proposals to Amend and Reauthorize the Magnuson Fisheries Conservation and Management Act." This is apparently a NMFS document.**

**Could you tell me a little about this document?**

Answer: This document represents a number of fishery conservation and management issues that NMFS and other entities



have identified for consideration during the reauthorization of the Magnuson Act. The document is considered a draft working paper, pending additional input from the Fishery Management Councils, and discussion with NOAA and the Department.

**Question 13:** In this document, there is a discussion of fair and balanced Council representation that suggests that the problem could be mitigated if each governor was required to nominate six rather than "at least three" nominees. I fear that your suggestion may give the federal government too great a degree of control over the selection process.

**Please comment.**

**Answer:** As noted in the previous answer, the document is a draft working paper. It would be premature to comment on any of the proposals at this time. We are in the process of developing our views concerning improvements of the Magnuson Act.

**Question 14:** In reviewing the shark plan developed by the Secretary I note that 30 hearings were held. That's a lot of hearings.

**Is that typical of the number of hearings that are held prior to adoption of a Plan? Could the process for developing an FMP be streamlined while still assuring a quality plan?**

**Answer:** NMFS does not believe that the 30 hearings it held to develop the Secretarial FMP for Atlantic Sharks over a 4-year period is an inordinate number considering: (1) significant changes in the draft FMP after the first round of coastwide public hearings, requiring a second round of hearings; (2) the geographical area covered by the FMP (i.e., the EEZ off the east coast, the Gulf of Mexico, and the Caribbean Sea) is extensive; (3) there are 39 shark species comprising the management unit; (4) there are numerous components of the shark fishery (both recreational and commercial); (5) there is a large number of affected fishermen, coastal states, and Regional Fishery Management Councils; and (6) there are many controversial issues involved.

New FMPs or major amendments prepared by the Regional Councils often involve this many hearings over a several-year period. Streamlining the development process for FMPs may be possible without affecting adversely the quality of the plan. This issue is being considered as part of our review of the Magnuson Act.

**Question 15:** NMFS in its document "Our Living Oceans" notes that 42 percent of 153 species groups are overfished. Does this indicate a conservation problem and, if so, how do we address this problem?

**Answer:** In the 1992 edition of "Our Living Oceans" (OLO) which updates the edition cited above, 43 percent of species groups are

overutilized. This is a conservation problem. Forty-one percent of the assessed species groups are also at an abundance level too low to produce their long-term potential yield. Some have been reduced to critically low levels of abundance, including many species of New England groundfish and the Atlantic bluefin tuna. Overutilization is also an economic and social problem. For example, a study by the Commonwealth of Massachusetts concluded that overutilization of New England groundfish annually results in a loss of \$350 million of gross income and 14,000 jobs. NMFS estimates that the net benefit from fisheries nationwide could be increased by nearly \$3 billion annually by using fishery resources optimally. The number and quality of recreational opportunities also could be greatly improved.

Unfortunately, the only way to rebuild overfished resources is to reduce catch in the short term and fishing effort in the long term. There are a variety of approaches that may be appropriate, including quotas, gear restrictions, area closures, limited access programs and other limitations on fishing effort. We are committed to working closely with the Regional Fishery Management Councils and the Congress to identify which approaches will be most effective for each fishery.

**Question 16:** How do you perceive the balance of power between fishery management councils and the Secretary of Commerce/NMFS? Should the Secretary of Commerce exercise greater authority over the Councils?

**Answer:** We believe that the current balance of power is appropriate. However, we will be looking closely at this issue in the context of our comments on the Magnuson Act.

**Question 17:** Last year, the New England Fishery Management Council was placed under a court order to revise its approach to groundfish management.

**Does this situation suggest problems with Magnuson implementation? How might such problems be corrected?**

**Answer:** Problems in this fishery can be traced to the contradictory goals of preventing overfishing and minimizing economic dislocation. For too many years, the only brakes on overfishing were indirect controls on effort (e.g., mesh size, minimum fish sizes and area closures) that were expected to conserve the stocks, but, in fact, did not. The consent decree of the court, which was recently upheld by the First Circuit Court of Appeals, has been important in accelerating a revised approach to the management of groundfish in New England. The Council has recently made available for public review a draft of Amendment 5 to the Northeast Multispecies FMP. Among the

alternatives under consideration are permit limitation and direct controls on fishing which, when used in conjunction with the indirect controls of mesh size, fish size and area closures, are projected by the Council to result in a recovery of the stocks during a specified period.

**Question 18: How should the selection process for new members of Fishery Management Councils be modified to ensure a more fair and balanced Council membership?**

**Answer:** As noted in our response to question 13, we are in the process of developing our views concerning the need for substantive changes to the Magnuson Act.

**Question 19: We have heard a good number of complaints about conflict of interest among Council members.**

**Please comment on the seriousness of this problem.**

**Answer:** The reality or perception of conflict of interest among Council members has affected the credibility of the Councils in making high-stakes allocative decisions. Under the present structure of the Act, conflicts of interest are virtually unavoidable, since members must be knowledgeable and experienced in the fisheries under Federal management.

We have taken some steps to ameliorate the effects of conflicts of interest. We continue to emphasize the "stewardship" role of Council members through the appointment process and at our annual orientation workshop for new Council members. We are expanding the financial disclosure requirements for Council members, and plan to make these more readily available to the public. We also suggest that Council members who have a conflict of interest refrain from voting on a particular issue.

**Question 20: Is NMFS pursuing research to find more accurate, reliable, and cost-effective ways to estimate fish population levels?**

**Answer:** NMFS places a high priority on improving its stock assessment methods. To do so it is pursuing several avenues:

1. **Methods of Analysis** - New methods of mathematical and statistical analysis are evaluated to determine if they can be used to improve precision and accuracy. This includes the development of filtering methods, pattern recognition techniques, artificial intelligence and "risk assessments" that take into account uncertainty in fisheries management.
2. **Sampling Design** - Traditionally, resource surveys have been conducted with stratified random sampling designs, and fisheries

statistics collections have attempted to achieve a complete census. NMFS is evaluating alternative designs such as geostatistical methods for resource surveys and partial canvasses for fisheries statistics.

3. Optimal Use of Resources - Estimates of fish population size integrate several different types of data. Each type contributes to the overall precision and accuracy of the estimates. NMFS is using simulation models to evaluate the sensitivity of estimates to each input data type, in order to use optimally resources to maximize precision and accuracy.

4. Technology Improvements - NMFS is investigating new methods of (a) sampling populations, such as acoustical and optical systems; (b) processing samples, such as automated systems for species identification, and (c) processing data at sea. These methods have the potential to improve data quality at a lower cost.

5. Monitoring Gear Performance - Resource surveys usually use traditional fishing gear, such as trawls, to sample populations. New methods of monitoring the performance of fishing gear (e.g., determining if bottom trawls are actually fishing on bottom) are being used to eliminate variability in gear performance as a source of error in population estimates.

6. Catch Per Unit of Fishing Effort (CPUE) - Data of this type (CPUE) is used in the estimation of population levels. NMFS is collecting catch-and-effort data with fine-scale spatial and temporal resolution, and disaggregated data (i.e., individual fishing operations, such a single trawl haul) to improve the usefulness of CPUE data.

**Question 21: Do Councils generally have adequate data to ensure that Fishery Management Plans have a scientifically sound basis? Do Councils take full advantage of this information?**

**Answer:** The Councils are supplied with the best scientific information available. The 1992 edition of "Our Living Oceans" indicates that insufficient information is available to determine the utilization level of 34 percent of the fisheries stocks presently under management. The adequacy and accuracy of data vary from FMP to FMP and are dependent upon resources available, stock assessment technology, and cooperation of the user community. Utilization of available information also varies, depending upon the philosophy of Council members, the level of involvement in plan development by the Scientific and Statistical Committee, and the capabilities and experience of Council staff.

**Question 22: How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?**

Answer: Many thousands of harvesters already contribute information and data through log-book programs, at-sea sampling and observer programs, participation in dockside and telephone interview programs, and tag-and-release programs. Improvements could be achieved by increasing the participation of harvesters in some fisheries, educating harvesters on the importance of providing complete and accurate information, and increasing resources to fully implement these programs.

**Question 23:** When will you be able to provide a NMFS budgetary outlook for FY 1994? What impact will the recent Congressional rejection of a FY 1993 reprogramming request have on NMFS?

Answer: The President's FY 1994 budget was transmitted to Congress on April 8, 1993. We would be pleased to answer any questions from the Subcommittee concerning NMFS' budget request.

The Department is reviewing current operating needs and anticipates the development of a proposed alternative to the FY 93 reprogramming request.

Testimony of Joseph Brancalone, Chairman  
New England Fishery Management Council  
Before the U.S. House of Representatives  
Subcommittee on Fisheries Management  
Washington, DC  
March 3, 1993

Mr. Chairman and Members of the Subcommittee:

I am Joseph Brancalone, Chairman of the New England Fishery Management Council. Our Council, at its regular meeting last week, discussed the question of possible amendments to the Magnuson Act during the upcoming reauthorization process. It was the consensus of our members that the Council system of management under Magnuson is fundamentally sound and that there is no need for major restructuring of the Council system or sweeping changes in the Act. There are persistent problems relating to procedures and operations, however, and we invite your careful consideration of ways to alleviate or remove some of those problems.

We believe that a major impediment to the effective functioning of the Councils is the complex and extensive rulemaking process. Even the simplest kinds of measures or changes to a fishery management plan (FMP) require exhaustive analyses, public discussion and reviews before they can be implemented. Our Council has, from the beginning, operated in a totally open manner with extensive inputs from the industry and the interested public and we will continue to do so. There are times, however, when even with industry concurrence and support, we are unable to take prompt action to protect spawning aggregations of fish or otherwise advance the goals we are striving for. We believe the process might be speeded up by decentralizing review and approval and giving a large measure of those responsibilities to the Regional Directors.

There continues to be an inadequate level of funding for effective operation of the Councils. If the system was less complex and the analytical requirements less stringent, the funding problem might also be diminished. We also think that if major restrictions have to be imposed on the harvesting sector in order to meet stock rebuilding schedules mandated by the (50 CFR 602) fishery management plan guidelines and the condition of various stocks, then some level of assistance to the industry is essential. The Council has not generally favored subsidies or government assistance programs and much of the industry has also been uninterested in such programs. Now, however, it is clear that without some assistance a significant part of the fishing community may not be able to financially survive the type and level of restrictions currently being considered by the Council for both scallops and groundfish.

Finally, we would like to see a less rigid application of the 602 guidelines by the National Marine Fisheries Service (NMFS). We do not object to the guidelines *per se*, but we believe NMFS has clearly exceeded the intent of Congress, which in an earlier amendment to the Act, inserted into Section 301(b) the parenthetical language "which shall not have the force and effect of law". By placing the guidelines in the Code of Federal Regulations and by its own policy decision, NMFS has changed the guidelines from a tool "to assist in the development of fishery management plans" to a rigid, obligatory set of requirements which, if not followed in minute detail, guarantee disapproval of a plan or amendment. Even NMFS (in its efforts to manage Atlantic Highly Migratory Species) has recognized that compliance with the guidelines requires a great amount of effort and at times borders on the impossible. But the strict application of the guidelines continues.

We have seen numerous proposals put forth by NMFS and by other groups for possible amendments to the Act. We are not yet prepared to support or oppose those proposals but will continue our deliberations and our discussions. We intend, at a subsequent hearing by the subcommittee, to take positions on at least some of the suggested amendments. For the time being we urge caution in the amendment process. The system is less than perfect but it does not need a major overhaul or extensive revision.

I will be glad to answer any questions.

TESTIMONY OF

LEE G. ANDERSON,  
CHAIRMAN, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT

COMMITTEE ON MERCHANT MARINE AND FISHERIES

MARCH 3, 1993



Good morning. I am Lee G. Anderson, Professor of Economics and Marine Studies, University of Delaware, and Chairman of the Mid-Atlantic Fishery Management Council. Before I begin my testimony I would like to make it clear that, except for one issue, I am speaking for myself, not on behalf of the Council. Because of your hearing schedule and the Council's meeting schedule, I was not able to present my remarks to the Council for their consideration and approval.

We would appreciate your keeping the record of this hearing open so the entire Council can consider these issues and prepare a position. We understand that this is a preliminary hearing and that others will be held later. We would welcome the opportunity to return and present the formal position of the Council on the various issues as they develop.

#### LARGE-SCALE DRIFT NET FISHING [102 and 206]

Large-scale drift net fishing should be banned in the EEZ off the east coast to reduce mortality of currently overfished stocks such as sharks and swordfish.

#### CHANGES TO COUNCILS [302(a)(2)]

One item that the Council has approved is the addition of North Carolina to the Mid-Atlantic Council. In May of 1991 the Council voted to support splitting North Carolina at Cape Hatteras for Council membership purposes, with the area north of Cape Hatteras being part of the Mid-Atlantic Council and the area south of Cape Hatteras remaining with the South Atlantic Council. Many of the fish populations split at Cape Hatteras. The fisheries for Atlantic mackerel, *Loligo* squid, butterfish, surf clams, ocean quahogs and scup all stop at Cape Hatteras. Summer flounder range slightly south of Cape Hatteras, but not south of the North Carolina, South Carolina border. The fishermen of North Carolina are entitled to a voting voice on the Mid-Atlantic Council, as well as on the South Atlantic Council.

#### DATA [303(a)(5) and 304(b)]

The Magnuson Act requires that each fishery management plan specify the collection of certain data elements and allows the Councils to specify additional data elements. Since part of these data are not available from the current NMFS data system, we have attempted to supplement NMFS data with vessel logbooks.

The Surf Clam and Ocean Quahog FMP has had vessel and processor reporting since 1977, with a high degree of comparability between the two data sources. From the beginning the logbook data were used to track catch against quota, so the effort limitations could be modified to reduce the chances of closure of the fishery. The logbook records made a significant contribution to the formula used to initially allocate the individual transferrable quotas. They are also used to calculate extraction rates for stock assessment and quota setting purposes.

In spite of the great success of the surf clam and ocean quahog logbook program, NMFS has been reluctant to approve similar provisions in other fishery management plans.

For example, we included vessel and dealer logbooks in Amendment 2 to the Summer Flounder Fishery Management Plan. The summer flounder resource has been overfished and Amendment 2 imposed a series of stringent measures, including a quota on the commercial fishery, to provide an opportunity for the resource to recover. To facilitate tracking catch relative to quota, Amendment 2 included vessel and dealer logbook reports. When NMFS approved Amendment 2 they approved both reporting requirements. Approximately six months later (December 1992) NMFS withdrew approval of the vessel logbook requirement, using the Paperwork Reduction Act as the reason. They indicated they were preparing a comprehensive logbook program for a number of fisheries in the Mid-

Atlantic and New England and that they would prepare a regulatory amendment to the Summer Flounder FMP in the summer of 1993 to take effect in January 1994 as part of the comprehensive logbook program. While a comprehensive reporting program has much merit and is a program we support, the summer flounder vessel logbook program should have been implemented 1 January 1993 as scheduled so we would have had data to audit the NMFS Weighout data and dealer reports during the first year of the quota program of this very critical Plan. If and when the comprehensive program actually comes about, summer flounder could have been added at that time.

Lack of funds should never be a reason for not approving essential logbooks. Permit fees should be allowed to be set at levels to cover these costs. The National Marine Fisheries Service must be given the appropriate financial resources to support the data collection mandates of the Act and the requirements of the plans. Modern computer and facsimile transmission technology should be used to keep costs at a minimum.

Reporting by dealers and fishermen should not be seen as an imposition, but as part of the routine cost of using a public resource, as it is with migratory water fowl, deer hunters, etc.

#### STOCK AND INDUSTRY RECOVERY [303(b)]

Additionally, it must be possible to have the appropriate tools available so Councils can assure that fishermen who struggle through the rebuilding phases of an overfished fishery can earn the benefits of the struggle. This is the most difficult test of fisheries management in the decade of the 1990's.

The Congress must provide tools to the Councils that can be applied as appropriate to each fishery management plan. Blanket solutions are not appropriate because the practices and economics of the fisheries differ. A solution that may have worked in the surf clam and ocean quahog fisheries and may have been adaptable to the wreck fish fishery may not work in other fisheries. Allocations to fishermen or to vessels may appropriately be auctioned in one fishery, be assigned for a fee based on historical participation in another, and given away as in surf clams in a third. The solution for a given fishery cannot be known until the fishery management planning process has run its course. The challenge for the Congress is to take the steps necessary so no Council must say "we cannot do that".

Consideration should be given to the possibility of various financial programs to support stock recovery. Vessel buy back programs funded from fees associated with allocations or from landing fees is one method that has been proposed for many years. The Congress should investigate these and other programs financed by user fees which could help the industry bear the costs of recovery.

In our Council's original Surf Clam and Ocean Quahog Fishery Management Plan, we implemented a moratorium on the entry of additional vessels into the surf clam fishery and stated the moratorium would last one year while we developed an individual transferrable quota (ITQ) system. At that time I was a member of the Council's Scientific and Statistical Committee and Chaired a subcommittee of that group created to design the ITQ system. We designed a system that was finally implemented in 1990. The delay was caused by arguments within the Council and within industry over how to make the initial allocation and within the Council over whether it was proper to "give away a public resource" since we could charge no more than the administrative cost of issuing the permits. When the effort limitations of the Plan allowed the boats to fish no more than 36 hours in a calendar quarter, such micro management of vessels resulted in pressure to change the Plan and a willingness by industry to consider an ITQ system. The free public resource issue then took a back seat to the necessity of change. However, it is still a significant issue in the minds of many Council members, and this could be a

roadblock to the timely development of appropriate regulations in other fisheries.

It must be possible for the public to recover some of the costs associated with allocation and entry limitation programs. Fishermen who are not permitted to enter a fishery at least should see a return to the public coffers by those privileged to participate.

#### FEES [304(d)]

The constraint on fees in 304(d) must be revised, both as a revenue producing tool and a fishery management tool.

It must be possible to charge reasonable fees for permits, whether or not entry into a particular fishery is controlled. General revenues cannot be expected to cover the costs of research, data collection, and enforcement. People who use a public resource should be expected to pay reasonable costs associated with that use and the revenue generated should be used to help defray the cost of the program.

Rigorous management measures are needed to rebuild overfished stocks and to develop underutilized species to fully achieve the promise of the Magnuson Act. The beneficiaries of this activity should share in the cost.

#### ADOPTION OF JOINT PLANS [304(f)]

Joint plans should be approved by a majority of the voting members of all of the participating Councils voting together, not as individual Councils. This would not necessarily involve joint meetings, merely summing the yes and no votes of all of the Council members of the involved Councils.

#### ENFORCEMENT [311]

Enforcement technology must evolve in concert with the evolution of management. Increasing numbers of fisheries are coming under Magnuson Act management regimes. Resources devoted to enforcement must increase if we are to achieve the mandate of the Magnuson Act.

Quota based systems require relatively inexpensive onshore enforcement.

However, non-quota based systems are favored by many, especially for fisheries that take place in federal and state waters. These systems, in order to meet the National Standards and Secretarial regulations, generally regulate when, where, how, and to what extent a fishery is prosecuted, which requires expensive at sea enforcement. In some cases these costs could be reduced through the use of remote sensing, which has been used in some Pacific Ocean fisheries. NMFS is considering promulgating a policy for vessel monitoring systems. Language in the Magnuson Act allowing the Councils to specify enforcement techniques appropriate for each fishery management plan, including vessel monitoring systems, would be helpful.

#### NORTH PACIFIC RESEARCH PLAN [313]

The provisions of 313 should be made applicable to the east coast Councils. We have been relying on the Northeast Fisheries Science Center's Sea Sampling Program for scientific data collection for development of plans and amendments and for monitoring implemented plans and amendments. Because the Center's program is financially stressed, we must be able to implement a system of fees in order to support a meaningful observer program.

## INTERJURISDICTIONAL CONSIDERATIONS

Mr. Chairman, I believe that it is also important for the Congress to address the question of interjurisdictional fisheries. Perhaps it should be handled outside of the Magnuson Act reauthorization, but it should nevertheless be a priority for this Committee. Let me explain.

The management authority for virtually every significant fishery in our area is shared with the states. We believe that we have made great progress, especially in the last two years, in coordinating our fishery management planning activities with the states through the Atlantic States Marine Fisheries Commission. The problem comes in the implementation of the management programs. The Secretary of Commerce implements the Council's FMPs in the EEZ. However, implementation within the territorial sea requires action by each individual state. For the most part this is accomplished responsibly. But in some instances, the lack of action by an individual state can call into question the basic viability of a fishery management program.

These are real life problems. The state of New Jersey has not implemented the cooperative state-federal fishery management plan for bluefish. This could hurt the bluefish stocks. But it is also undercutting the effectiveness of the management program in New York, where state officials are coming under increasing pressure from fishermen who object to unequal treatment.

The Council's fishery management plan for summer flounder is another example. The states are responsible for enforcing a state-by-state quota, size limit, and mesh size on the commercial fishery. Without effective state action, the management program will fail. Currently, North Carolina and Virginia are not in compliance and several others are not yet in full compliance. The lack of action by North Carolina and Virginia will likely thwart the efforts of the Plan due to large concentrations of summer flounder off those states.

Mr. Chairman, the answer lies in giving the states an incentive to carry out management programs that they have agreed to among themselves and in cooperation with the Councils. I am aware that the Atlantic States Marine Fisheries Commission and others are working with the Committee on some ideas. Without endorsing anything in particular, let me reemphasize the tremendous importance of solving the problem this year. Something must be done to put some real teeth into the implementation of interjurisdictional management plans. This will likely involve some sort of carrot and stick approach.

## CONCLUSION

What I have suggested are evolutionary refinements to the Magnuson Act. I urge that you consider them.

I also urge that you refrain from any major changes to the Act. The generation of fishery management plans and amendments spawned by the overfishing definition and related requirements of the 600 series regulations and guidelines are only now being completed and implemented. The new Operational Guidelines, with their social impact requirement, has only recently been promulgated by the National Marine Fisheries Service. These new requirements did not bring with them additional resources for the Councils to fulfill them. It is unlikely that new legislative requirements will be accompanied by additional resources. This reinforces the need for a system of fees, the income of which can be used to carry out the provisions of the Act.

Before additional responsibilities are given to the Councils in the areas of ecosystem and habitat, attempts should be made to improve communication and coordination with the ongoing programs of the National Marine Fisheries Service,

the Fish and Wildlife Service, the Environmental Protection Agency, the Corps of Engineers, the Minerals Management Service, and the states. We have had some success in working with these agencies in order to meet our obligations relative to the habitat of anadromous species within the resources available to us.

If you have questions, I will be happy to answer them.

BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES

TESTIMONY OF CURTIS W. BOSTICK  
ON BEHALF OF THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL  
ON THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

March 3, 1993

Submitted by:

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SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL  
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Good afternoon. My name is Curtis Bostic and I am appearing today on behalf of the South Atlantic Fishery Management Council of which I am the Chairman. Although many of the thoughts I will bring forth in my testimony are held by the majority of our council members, some will be my own based on my six years' experience. The South Atlantic Council is composed of members from the states of North Carolina, South Carolina, Georgia and Florida and has jurisdiction over the resources of the nation's marine fisheries in the exclusive economic zone from the northern boarder of North Carolina to the Gulf of Mexico. The Council routinely manages a number of fishery resources in conjunction with other East Coast and Gulf of Mexico councils. The Council believes strongly that it is a vital and integral part of the fishery management system and is government's best interface with the users of the resource.

My testimony today will focus on the need for a new management ethic -- one that promotes conservation -- by strengthening the management of the nation's fisheries and by removing many of the uncertainties in today's system. We have before us the opportunity to amend the Magnuson Act to provide a framework for a decision process that will enhance the long term viability of the economical interests that rely on the resource. The Act as presently constructed is not flexible enough to address today's fisheries problems and as implemented by the National Marine Fisheries Service does not provide the independence to fishery management councils to enhance the public's confidence in the management system.

Today's fishery manager is faced with ever increasing fishing pressure on decreasing resources by fisherman with more sophisticated gear. Demographers predict that population shifts could result in as much as 80 per cent of the population living within 100 miles of the coast of the United States in the next ten years. This shift in population brings with it an increase in pollution and congestion that affects fisheries habitat, but it also increases stress on coastal fisheries as more people with greater access participate in marine recreational fishing. At the same time, there will be increases in the consumption of fish and price inflation. These increases will attract more effort from the commercial industry to supply a broader spectrum of species to the marketplace. A tremendous increase in the efficiency of gear through the use of electronics, and gear configuration has put substantial pressure on the resource.

There is little recent history to suggest that the federal fishery management system is ready to meet this challenge. The basic philosophy characterizing much of the management of marine resource has allowed for the excessive exploitation of our fisheries so as not to cause economic hardship. The problem faced by the fishery manager today is relatively straightforward. Fishermen -- both recreational and

commercial -- argue that the resource is available to them as a public resource. Limitations on access are typically initiated after there is clear evidence that the fishery is being over harvested. The evidence of over harvesting is usually a decline in the catch per unit of effort, or the complete collapse of the fishery. The net result is that, although the fishery manager thinks the resource should be protected, he faces tremendous political pressure to keep it unregulated.

We have seen this philosophy in a number of fisheries, all with disastrous results. For example, five years ago the South Atlantic Council attempted to limit the swordfish fishery off the East Coast. The proposed measures were rejected by the Department of Commerce in part because of the lack of scientific certainty of the effect of the measures and pressure brought to bear by the U.S. and foreign fishing industries. This resulted in the near collapse of the fishery only two years later. Only a limited swordfish fishery exists today in the U.S. EEZ.

The mackerel fishery in the Gulf and South Atlantic has experienced the same type of problem. The first council plan for king mackerel established an Optimum Yield so high that recreational and commercial fishermen could not catch it. Subsequently, drastically declining mackerel catches required managers to implement strict harvest limits that had severe economic and social impacts on the fisheries. Although I am pleased to report the Atlantic king and Spanish mackerel resources have been rebuilt and are now considered to be in good shape, the Gulf mackerel resource as well as those of shark, summer flounder, reef fish and numerous others are still in poor condition and require further restrictive management.

The most efficient and least costly practice to monitor the status of a commercial fishery is to collect effort and harvest data to determine the ups and downs in abundance. This works for the large commercial fisheries, but many of the coastal fisheries are small and quickly exploited. By the time the government can respond to the commercial pressure on a species in a small fishery, it has been overexploited. The South Atlantic Council has initiated a change in management philosophy that addresses in at least one fishery the need to get ahead of the exploitation curve. One year ago it established a limited entry program for the wreck fish fishery that limited the growth in the fishery before it got out of hand rather than wait for the inevitable collapse in the fishery and dislocation of valuable economic interests. But this approach for new fisheries will not, in itself, lead to the recovery of already overfished fisheries.

Congress needs to establish in this statute a clear conservation objective for the nation. We should now admit what every participant in the fishery already knows -- fishing is a



highly regulated activity. If conservation is the primary goal of the Act, then Congress should adopt amendments that promote conservation. Congress should require that fishery management plans specify authorized harvest technologies, especially in stressed fisheries, rather than listing existing prohibited technologies. Where science is inadequate to manage, Congress ought to ensure that the limits set for harvest are conservative. For those fisheries that require international cooperation, Congress should require our negotiators to use the same principles. Congress should adopt a clear statement of conservation so that all users of the resource can benefit from it.

The Council has developed a series of specific measures that it would like to see considered for adoption which are appended to this testimony. Each of these measures is intended to strengthen the Council system. In addition, there are a series of concepts that should be considered by the Committee which are discussed below.

### Highly Migratory Species

The 1990 amendments exerted U.S. jurisdiction over highly migratory species of tuna and attempted to adopt a more international form of management for all highly migratory species. The attempt on the East Coast has been a failure, but the extension of jurisdiction over tuna has resulted in some progress on the West Coast. Little, if any, increased management of tuna has occurred as a result of the 1990 amendments; certainly, nothing more than could have been accomplished under previous authority. Bluefin tuna has been the subject of most of the attention, but it could have been managed under the existing Tuna Conventions Act Authority and, in most cases, was.

The long struggle to develop a Secretarial shark plan on the East Coast has finally resulted in a plan. Swordfish amendments are no longer necessary as the fishery itself has been substantially reduced in size and effect. The most positive thing about the lack of progress was that NMFS did not initiate any changes to the billfish plan, although billfish as a bycatch in the longline fishery needs further conservation. The net effect of the shift of authority from the councils to the Secretary for East Coast highly migratory species was that policy inaction, in the face of a resource crisis, has continued.

The 1990 changes have resulted in redirecting the industry criticism of the council process to the Department of Commerce. They did not quiet the critics. Although the most recent decisions at ICCAT show some possibility for improvement in swordfish and tuna management they have not resulted in an improvement of the domestic process. In short, the lesson learned from the 1990 amendments is that simply changing the

policy maker and removing all the checks and balances in the existing system does not fix the resource problem.

The substitution of NOAA as the primary policy maker role for development of management measures for East Coast species has proven unnecessary. The success of the 1990 amendments is the emphasis on the tying of domestic and intentional management. Domestic conservation of highly migratory species on the East Coast should be returned to a single fishery management council. To ensure the input of all Councils on the east coast the measures in the plan should be voted on as a Committee of the whole with majority rule. The most significant strides in highly migratory species have been made through the leadership of the Western Pacific Council. It has addressed and controlled growth in longline fisheries off Hawaii and has initiated a comprehensive study of the management of tuna in the U.S. EEZ. The same thing can be done by a single council on the East Coast.

#### Improving Fishery Management Councils

Every year since the formation of the councils, some group has argued that the councils do not represent the right interests. Most recently, it has been that the councils, particularly the ones in the South, are weighted too heavily with recreational fishermen. The fact that a council member votes for a conservation measure does not make him anti-commercial and, somehow therefore, a recreational fisherman. This oversimplification is used to explain all sorts of decisions that go against vested interests. The reality is that decisions are made for all kinds of reasons, but most of them are because of the need for rational conservation of the resource. It is not the so-called balance of the councils that is the problem, it is the way in which the NMFS and the public perceive the councils that leads to the general belief that they are not doing their job well.

The principle objection to fishery management councils has been that they make political and, therefore, arbitrary decisions, and members have inherent conflicts. Both of these problems have been raised at the Council and both have effected the Council's credibility.

Congress intended the councils to be independent bodies that created conservative policy by consensus and recommended to the Secretary management measures to implement that policy. The councils are entities with their own staffs, funding and programs. However, the council membership is composed of state fishery directors and private citizens that must work within a complicated and complex federal system where they depend on NMFS and NOAA to provide them with scientific, legal and administrative support. NOAA approves all of their operational

guidelines and provides them with all of their administrative and policy advice. Since 1976, NOAA has treated the councils as political bodies that make political decisions and in many cases NOAA has substituted its judgment for that of the councils.

Councils need to develop the kind of independence that is necessary to instill confidence in their decisions. To do that, councils need staff to stand up to the Fisheries Service and NOAA. Every council ought to be able to retain competent outside legal counsel to advise them on policy options and operation of the council. To further foster the independence of the councils, Congress needs to remove the voting authority from the Regional Director of NMFS. The Council supports authorizing the Fish and Wildlife representative to vote in order to keep voting balance. This change further strengthens the independence of the council from the NMFS and recognizes the growing and important role of the Fish and Wildlife Services role in marine fisheries management.

There has been substantial discussion about conflicts of interests. At the moment the Act only requires the disclosure of financial interests and does nothing to prevent the exercise of that interest to a member's direct economic advantage. Two negative impacts result. The public's perception of the council's overall integrity is impacted as the motives for key votes are challenged. Secondly, you, the Congress, are bombarded by user groups which have become increasingly convinced that the way to success in fishery management is to get "your guy" on the council. The net result is the council process is weakened, not strengthened. We realize that this is an issue that the Congress will address in this session and we welcome the debate and will take an active part in it.

#### Improving The Management System

The management system today is a result of the frustration of the industry with NMFS in the late 70's in implementing fishery management plans. Congress responded to this problem by requiring plans to be adopted in specific time frames if they were consistent with the statute. This approach only took care of half of the problem. The other half was the cumbersome system of plan development and subsequently plan amendment. Fishery management plans today are not broad statement of goals and management philosophy for a fishery. They are refined and detailed documents that more often than not were written to significantly reduce the discretion of the Department of Commerce in implementing the plan. For the most part, they achieved that objective at the loss of any flexibility to address changing circumstances in the fishery. The result is that there are increased emergency regulations being published and hurried analysis of complicated resource decisions in order to get new amendments in place. The system needs to be overhauled to allow

the councils more authority to initiate rulemaking without having to adjust the operative fishery management plan. The planning process ought to go back to what it was -- a broad outline of the objectives and philosophy for the fishery. Regulations proposed by the councils could then be adopted that were consistent with the plan thereby making the system more flexible and responsive to change and by putting the initiation of regulations where it should be in the hands of the council.

Congress needs to restrain itself from trying to micro manage fisheries by statute. Congress wants and needs to be responsive to its constituencies, but development of specific management measures through legislation does not work very well. As a guiding principle, fisheries management works best when the lowest level of effective government issues the regulations. They are accepted by the users more readily and are generally more responsive to the needs in the fishery. By strengthening the councils and providing for more certainty in the NMFS approval process, Congress will get better and more responsive management. Congress should resist the urge to manage fisheries through federal legislation; no recommended scallop plans, no specific groundfish regulations and no restriction on the ability of the system to address bycatch in the shrimp fishery.

NMFS needs to be encouraged to promote limited entry in every form available. Moratoriums, transferable landing rights, transferable quotas and vessel substitutions all need to be addressed. An auction system should be examined for allocation of fisheries and the restrictions on the costs associated with management programs should be eliminated from the Act. It is time to give the managers all the tools necessary to manage the fishery in a reasonable fashion. Once you institute a conservation ethic in all of the users of the resource, you will reduce the pressure on the Congress, the Administration and the councils to allow larger catches of a dwindling resource.

I hope that our comments help to provide some thoughts for the Committee as it prepares to look at the Magnuson Act. The council system needs some reform but it is in the form of strengthening not weakening the system that the Congress needs to direct its attention.

Thank you for allowing the South Atlantic Council to testify here today.

**SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

Curtis W. Bostick, Chairman  
John F. Floyd, Vice-Chairman

ONE SOUTHPARK CIRCLE, SUITE 306  
CHARLESTON, SOUTH CAROLINA 29407-4699  
TEL 803/571-4366 FAX 803/769-4520

Robert K. Mahood, Executive Director

July 19, 1993

Ms. Lori Rosa  
Office of Honorable Thomas J. Manton, Chairman  
Subcommittee on Fisheries Management  
United States House of Representatives  
Annex II, Room 513  
Washington, DC 20515

Dear Lori:

Following are the answers to the questions you faxed to me on July 9. Our Chairman, Curtis Bostick, is on vacation and out of touch at this time, so I have answered the questions on behalf of the council based on the MFCMA amendment positions the council has established.

GENERAL QUESTIONS FOR COUNCIL WITNESSES

1. Our council has not directly considered a recreational or commercial fishing fee for everyone that fishes in the EEZ. However, the council does favor removing the limitation in the Act that fees charged for various activities not exceed administrative costs (see below).
2. The council favors amending Section 304 (d) by removing the limitation that fees not exceed administrative costs, and making appropriate amendments to Section 303 concerning the discretionary provisions of FMPs to allow the Councils to establish fees for the implementation and maintenance of observer and data gathering programs and controlled access systems. Establishment of fees should be accomplished on a regional basis through plan/amendment development and the funds collected would be dedicated to the purpose for which they were collected.

Currently, Section 304 (d) limits any fees charged U.S. fishermen to the administrative costs of issuing permits or licenses. As fisheries management under MFCMA has progressed and evolved over time, the need has arisen for a mechanism to fund data collection and observer programs and controlled access systems. Many FMPs are being amended to incorporate these programs and systems with the end result of creating more cost effective management and profitable fishing operations. However, the cost of implementing these programs and systems cannot be met under the current language in the Act. Allowing the Councils, in consultation with the Regional Director, to have discretionary authority to charge some type of user fee as part of a management plan would enhance the MFCMA management process and better serve the needs of the resource and resource users.

3. No.

4. No.

5. Although our council has not taken a position on whether legislation should be strengthened to address conflict of interest, we are moving forward in modifying our Statement of Organization Practices and Procedures (SOPP) to address conflict of interest at our August, 1993 meeting.

At the May, 1993 meeting of the eight regional council chairmen and executive directors, a major topic of discussion was the conflict of interest issue. After much discussion the majority of the chairmen agreed to six points: 1) the Magnuson Act creates and allows for a conflict of interest by the voting membership of the councils; 2) the councils believe that conflicts of interest are more perception than reality but recognize the perception as an important issue; 3) the conflict of interest issue should be address on a council by council basis and not through legislation; 4) financial disclosure forms of voting members should be made available at all meetings that are announced in the Federal Register; 5) the councils oppose any proposal that paid industry representatives be given lower priority in appointment to council membership and 6) the councils stand ready to review and consider suggestions from any source on addressing or mitigating the conflict of interest issue.

I hope the answers to these questions are helpful. If you require any further information, please contact me.

Sincerely,



Robert K. Mahood  
Executive Director

**SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL  
RECOMMENDATIONS FOR AMENDMENTS TO THE MFCMA**

1.

**SECTION TO BE AMENDED: SEC. 3. DEFINITIONS**

**RECOMMENDATION:** Amend Section 3. (7) and (9) to assure assemblages of marine plants and animals depending on critical non-living habitat (e.g. live rock) can be managed through an FMP specific to those assemblages.

**SUGGESTED LANGUAGE:** (7) The term "fish" means finfish, mollusks, crustaceans and all other forms of marine animal and plant life, including any non-living habitat for which they require permanent attachment to sustain life, other than marine mammals and birds.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish and any habitat of fish, including any non-living habitat for which they require permanent attachment to sustain life

**RATIONALE:** These definitions are fairly all inclusive; however, for plan development and fishery management purposes they need close review and expansion if necessary to assure assemblages of marine plants and animals with critical non-living habitat can be managed by the councils through a fishery management plan specific to the non-living habitat that supports those assemblages.

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2.

**SECTION TO BE AMENDED: SEC. 206. LARGE-SCALE DRIFT NET FISHING**

**RECOMMENDATION:** Amend Section 102 to prohibit drift net fishing in the EEZ off the east coast.

**SUGGESTED LANGUAGE:** Change language as appropriate throughout the Act.

**RATIONALE:** The increasing utilization of this gear in various fisheries, some if not most of which are fully utilized or over fished (e.g. sharks, swordfish) is detrimental to the rebuilding of the target stocks and adversely impacts threatened, endangered, or protected species taken as bycatch.

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3.

**SECTION TO BE AMENDED: SEC. 302. FISHERY MANAGEMENT COUNCILS**

**RECOMMENDATION:** Section 302 (b) Voting Members be amended to include the Fish and Wildlife Service as a voting member of the Councils.

**SUGGESTED LANGUAGE:** Under (b)(1) add a (D) to read: The regional director of the Fish and Wildlife Service for the geographic area concerned, or his designee;

**RATIONALE:** Expansion of the voting membership on each council to include the Fish and Wildlife Service would lend additional objectivity and balance to the voting membership of the councils. Because of the F&WS's involvement in the coastal state's marine research activities pursuant to Wallop-Breaux, the agency has a vested interest in, and contributes to, the management of numerous marine species, many of which are under MFCMA management. As a voting member, the F&WS would bring additional coordination, expertise and guidance to the council process.

4.

**SECTION TO BE AMENDED:** SEC. 302. FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Section 302. (g) Committees and Panels (3)(B) be amended by deleting the word "commercial" before "fishing interests".

**SUGGESTED LANGUAGE:** Delete "**commercial**".

**RATIONALE:** Appointments should be made to provide fair representation to "all" fishing interests that possess knowledge that will benefit the MFCMA management process.

5.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Amend Section 304 (f) Fisheries Under Authority of More Than One Council (1)(A)&(B) to establish joint authority and voting procedures.

**SUGGESTED LANGUAGE:** Amend Section 304(f) as follows:

(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary shall require that a plan or amendment for the fishery be prepared jointly by the concerned Councils.

(A) No jointly prepared plan or amendment shall be submitted to the Secretary unless it is approved by a majority of the voting members of the Councils concerned, voting as one body.

(i) **OPTION 1:** When a state is represented on two Councils involved in preparing a joint plan, all Council members from that state shall be allowed to vote in the joint voting process.

(i) **OPTION 2:** When a state is represented on two Councils involved in preparing a joint plan, the number of votes that state may cast in the joint voting process shall not exceed the greatest number of Council members representing that state on any one Council.

(ii) The appropriate Regional Director(s) involved in preparing a joint plan shall have one vote in the joint voting process.

**RATIONALE:** Establishing joint council authority and voting procedures for fisheries that extend beyond the geographical jurisdiction of any one council will insure that the resource is fully protected and that all fishing interests are fairly represented in the management decision making process.



6.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Amend Section 304 (f) Fisheries Under Authority of More Than One Council (3) to make management of highly migratory species uniform throughout the U.S.

**SUGGESTED LANGUAGE:** Amend language as necessary throughout the Act.

**RATIONALE:** Management of highly migratory species should be consistent throughout U. S. jurisdiction and is best carried out under the council system process. The council management process provides for extensive and effective public input by all interested parties throughout the decision making process. Constituents have developed an understanding of how the process works and how to have meaningful input. Past joint council management of highly migratory species was plagued by ineffective jurisdictional and voting procedures that created long delays in developing management strategies and by an administration that refused to allow the councils to implement meaningful management measures. If management of highly migratory species were returned to the councils, it would be necessary to establish joint council management authority and voting procedures that would allow for a timely decision making process as recommended in # 5 above.

7.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Specify a timeframe for Secretarial action after Council submission of regulatory amendments.

**SUGGESTED LANGUAGE:** Reletter the present paragraphs (c) through (g) to (d) through (h) and add a new paragraph (c) as follows: **(c) REGULATORY AMENDMENTS. A regulatory amendment approved by a Council pursuant to the provisions of a fishery management plan shall be processed by the Secretary in accordance with Sections 304(a) and (b) unless the Secretary determines such regulatory amendment can be processed more quickly.**

**RATIONALE:** Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP amendments, but this mechanism has not worked. Regulatory amendments have no mandatory schedule for review and approval and are not always processed expeditiously. All councils have experienced the same delays with regulatory amendments. NOAA Fisheries has encouraged the Councils to include framework measures within their FMPs to allow for modifying plans without having to amend the FMP. Many such framework measures are implemented by regulatory amendment. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and are not processed expeditiously, thereby creating significant management problems. The delay generally occurs at review levels above NOAA Fisheries. The inclusion of regulatory amendments in Section 304 would in no way prevent them from being processed and approved more rapidly than FMPs, however it would insure they will be processed in a timely manner.

8.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Amend Section 304 (d) by removing the limitation that fees not exceed administrative costs, and make appropriate amendments to Section 303 concerning the discretionary provisions of FMPs to allow the Councils to establish fees for the implementation and maintenance of observer and data gathering programs and controlled access systems. Establishment of fees should be accomplished on a regional basis through plan/amendment development and the funds collected should be dedicated to the purpose for which they were collected.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Currently, Section 304 (d) limits any fees charged U.S. fishermen to the administrative costs of issuing permits or licenses. As fisheries management under MFCMA has progressed and evolved over time, the need has arisen for a mechanism to fund data collection and observer programs and controlled access systems. Many FMPs are being amended to incorporate these programs and systems with the end result of creating more cost effective management and profitable fishing operations. The cost of implementing these programs and systems cannot be met under the current language in the Act. Allowing the Councils, in consultation with the Regional Director, to have discretionary authority to charge some type of user fee as part of a management plan would enhance the MFCMA management process and better serve the needs of the resource and resource users.

Under open access, economic benefits from the fishery are low because fishermen from other fisheries enter to garner those profits. Because property rights are not established, anyone who wants to obtain a permit can join the game under open access. In the end, profits are dissipated to the point where fishermen are just equaling the opportunity costs at the margin.

Controlled access for fisheries creates benefits for society by allowing increases in efficiency and preventing net benefits to fish harvesters from being regularly dissipated by entry into the fishery. The property rights aspect of controlled access allows fisheries to be profitable and truly productive, just like any other type of commerce in this country.

Increased profits under controlled access (or "resource rents" as economists have called them) are returns in excess of "normal" profits (opportunity costs) under open access. Rents reflect the value of the resource under fishery management where property rights are established.

As it stands now, if managers develop controlled access for a fishery, rents created from controlling access can only go to the fishermen. Thus the common property of the people is, in effect, privatised, and no fees or royalties can be extracted to benefit the people. Also, the government will continue to pay management and data collection costs for the managing a renewable resource under controlled access that benefits only a few private citizens. Fishermen under controlled access will only be responsible for covering the costs of issuing permits (roughly \$35.00 per year). Resource rent fees could at a minimum be used to pay management and administrative costs so that other fiscal resources are not devoted to paying for the management of a privatised resource.

Not allowing a portion of rents to be recovered from fishermen actually works as an impediment to the consideration of developing controlled access. Any manager charged with evaluating controlled access who has a keen sense of fairness will be reluctant to consider controlled access because, currently under the MFCMA, it would benefit fishermen alone.

Some fisheries are large in terms of annual production and the scale of rents that would be created annually under ITQs or other rational management schemes would be impressive. Being productive and potentially profitable should induce managers to develop controlled access rather than avoid doing so. When New Zealand decided to move to ITQ management for all of its commercial fisheries in 1986, provisions to recapture a portion of resource rents from businesses who benefit from controlled access was put into the system from the outset. The only way that we are going to move to rational management of our fisheries so that society can derive benefits from those considerable natural resources (just as they do with oil and gas, timber, water, coal, and all others save fish) is to control access by establishing some form of property rights.

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9.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** (g)(6) INCIDENTAL HARVEST RESEARCH and (d) ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN should both be repealed.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Although (g)(6)(B) sunsets the prohibition on measures to reduce incidental bycatch in the shrimp trawl fishery, there is always the chance that this subparagraph would be repealed or revised so as to extend the prohibition. (d) concerning Atlantic scallops is an unnecessary intrusion into the mandate given the councils to manage the fisheries. If a particular council is shirking its management responsibilities for a fishery, the Secretary always has the ability to step in and prepare an FMP or amendment pursuant to Sec. 304.

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10.

**SECTION TO BE AMENDED:** SEC. 306. STATE JURISDICTION

**RECOMMENDATION:** Amend Section 306 to specifically establish and/or clarify the authority of the states to manage species harvested in the EEZ that occur in both the EEZ and state territorial waters. Also, amend the Section to enable a state, with the concurrence of the appropriate council, to establish landing laws/regulations for species harvested in the EEZ as well as state waters.

**SUGGESTED LANGUAGE:** Amend language as needed.

**RATIONALE:** As a result of a recent law suit, the State of Florida has been prohibited from establishing landing laws for mackerel. The implications of this case are that a state may not use landing laws to manage species that occur in both state waters and the EEZ, even to regulate its own citizens. In many instances a state can solve allocation problems more simply through the use of landing laws than can be accomplished through council action. This is especially true when dealing with localized problems that do not warrant fishery management plan amendment by a council. Also, this may preclude a state from establishing a stricter management regime when dealing with an EEZ species even if a council concurs with their action. It

will be very beneficial to cooperative federal/state management of species that transcend the EEZ boundary if Congress will clarify the authority of the states in managing these species .

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11.

**SECTION TO BE AMENDED: SEC. 311. ENFORCEMENT**

**RECOMMENDATION:** Amend Section 311(e) Payment of Storage, Care and Other Costs (1) to establish a mechanism (e.g. grant-in-aid awards) for the Secretary to provide funding to the states for their participation in MFCMA enforcement activities through cooperative agreements.

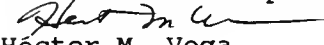
**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Providing a basic level of federal aid to the states for enforcement of regulations would greatly enhance the states ability to participate in cooperative enforcement efforts with the NMFS which would in turn improve overall MFCMA enforcement, compliance and management. A minimum award level could be established for coastal states which have cooperative state/federal law enforcement agreements. States could qualify for graduated amounts based on the number of species managed in federal waters adjacent to a particular state, the amount of coastline and/or size of a particular state's recreational and commercial fisheries (number of vessels and fishermen). Following the initial years of the grant, there could be a performance criteria of some level of enforcement activity for continued receipt of federal funds. The interest earned on the fund of fines, penalties, proceeds from seized catch, etc. could serve as the initial source of funds to support the basic grants. The grants would be perpetuated through the fines. Such a provision would have to be structured in such a way that the fund supporting the grants is perpetuated and not depleted.

February 26, 1993

## MEMORANDUM

TO: Committee on Merchant Marine and Fisheries,  
U.S. House of Representatives

FROM:   
Héctor M. Vega  
Chairman CFMC

SUBJECT: Testimony and Recommendations of the Caribbean Fishery  
Management Council on H.R. 780, legislation to re-  
authorize the Magnuson Fishery Conservation and  
Management Act

My name is Héctor Vega. I am a commercial fisherman by profession, and Chairman of the Caribbean Fishery Management Council.

First of all we would like to express that it is our opinion that the MFCMA is fulfilling its mandate, and there is no reason to change the fundamental parameters of the Law. We understand, however, that there are some issues that will be discussed during this process and would like to take this opportunity to offer our opinion on two of these issues:

1. Habitat

It is of utmost importance to strengthen the MFCMA in all habitat concerns. Habitat is the most important component of a fishery. We endorse any changes to the Law that will identify and protect the habitat needed to maintain Optimum Yield.

2. Large Pelagics

We endorse giving the responsibility of preparing management plans for highly migratory species (HMS) back to the Councils. The Councils have the necessary mechanisms to ensure the participation of all concerned with these fisheries. Perhaps what is needed is a better

method for all Council constituents to vote in the process of managing the HMS.

In addition we would like to bring to your attention our particular situation in the Caribbean. Since the creation of the Council system in the 1970's neighboring nations in the Caribbean have looked for our cooperation in developing a successful management strategy for fishery resources that are common to the U.S. Caribbean and the rest of the Caribbean. Therefore our Council has been very active in the promotion of pan-Caribbean management. As a matter of fact, two of our FMPs have as one of the objectives the "promotion of pan-Caribbean management." We believe we are being successful in addressing this objective, since many of the Caribbean nations are in the process of adopting the Council's system, including the preparation of management plans in the management of their respective fisheries.

Finally, the Council has not been able to meet to discuss in detail all the issues involved in this re-authorization process. Therefore, we respectfully request the opportunity to submit additional comments, if necessary, after our next Council meeting.

Thank you very much for the opportunity to present our views on these important issues.

Testimony By

Philip Horn, Chairman  
Gulf of Mexico Fishery Management Council

On Reauthorization of the Magnuson Act

Before The

Subcommittee on Fisheries Management  
Merchant Marine and Fisheries Committee  
House of Representatives  
March 3, 1993

Chairman Manton, and members of the committee, I appreciate this opportunity to appear before you and provide recommendations for your consideration in reauthorizing the Magnuson Act. The Act has been of vital importance to management of the fishery resources of our region. Currently, ten fishery management plans (FMPs), implemented under the Act, regulate most of the species that are predominantly in the federal waters of the Gulf of Mexico. These fisheries vary from shrimp, which produces 200 to 300 million pounds of landings annually, valued at about 1.4 billion dollars to the national economy to coral reefs, which are a valuable nonconsumptive resource. Therefore, reauthorization of the Act is critically important to our region, its economy and the social structure of its communities.

Over the years fishing effort and utilization have increased dramatically and there are few stocks that could be classified as underutilized. Our fisheries generally all have both recreational and commercial participants and many are estuarine dependent which involves cooperative management with the states.

Under the Act, NMFS is charged with providing the information to the Council for proper management of these stocks. We are concerned over the inadequate funding that has been allocated to NMFS under the Act for data collection, research and analysis, enforcement, and management support. The seriousness of this problem is illustrated in NOAA's annual report to Congress entitled Our Living Oceans which assesses current knowledge on the status of the stocks. For a large number of stocks, of very great importance to our fishermen and economy, the status of the stocks is classified as unknown. In our reef fish complex which includes 39 species, principally snappers and groupers, we have definitive stock assessments for only three stocks.

The past two administrations submitted to Congress an annual budget for NMFS that was generally reduced by about 20 to 40 percent over the previous year. Fortunately, Congress restored some of the funding each year. However, funding for the collection of basic management information and technical analyses necessary for proper management of fishery resources in our region has been, and is inadequate. NMFS even lacks an adequate number of scientists with expertise in population dynamics, to provide us more than three stock assessments annually, much less the capability to collect the proper fisheries information needed for these assessments. I recognize that the budget deficit must be addressed by Congress, but adequate funding for management of our fishery resources will contribute significantly to the economy of the nation and help alleviate this problem. It is a prudent investment in the future.

We have long recognized the importance of maintaining and improving the marine environments for our fishery stocks and have been actively involved in habitat protection since 1979. Our region has 46 percent of the nations coastal wetlands which are vitally important to our fishery resources and which are being altered at an alarming rate. We, therefore, request you strengthen Section 302 (i) that allow Councils to address habitat concerns. We will offer suggested recommendations for that purpose following our meeting next week.

Our Council has not had the opportunity to discuss specific amendments to the Act, but will do so next week. Therefore, I am reluctant to suggest specific changes on their behalf and request you keep the record open until we are able to provide these recommendations by letter. I feel that the Act, as currently drafted, is very effective legislation and that our recommendations will largely be minor adjustments to improve the effectiveness of the current system.

We thank you for this opportunity to work with the committee to improve management under the Act. I will be pleased to answer any questions or provide my comments on specific issues.



TESTIMONY OF CLARENCE G. PAUTZKE  
EXECUTIVE DIRECTOR  
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL  
Before the  
HOUSE SUBCOMMITTEE ON FISHERIES MANAGEMENT

March 3, 1993

I am Clarence Pautzke, Executive Director of the North Pacific Fishery Management Council. Thank you Mr. Chairman and members of the Subcommittee for this opportunity to testify on behalf of the North Pacific Council on important issues involving reauthorization of the Magnuson Fisheries Conservation and Management Act. The issues being raised this year are complex and reflect our current environment for fisheries management. The fisheries are for the most part fully Americanized, the resource is limited, and the industry oversubscribed. There's little, if any, freedom to move into undeveloped fisheries, and a win-win solution is rarely available to managers.

It will not be easy to determine which issues are substantive, which are valid; whether the Act needs major structural change or minor tinkering around the edges. My impression from the National Fisheries Institute Conference last week is that there did not appear to be any groundswell of support from industry for major structural changes to the Act, or for a diminution of the Councils' role in policy setting for United States fisheries. That does not mean, however, that there will not be many individual concerns voiced by industry over the next few months. I view this dialog as constructive, and as evidence that the system is working. Despite the controversy, the Councils are moving ahead with fisheries management and conservation decisions.

I am particularly proud of the North Pacific Fishery Management Council. They have chosen to address very difficult issues, those that deal with allocations, limited entry, bycatch, conservation, and protection of sensitive ecosystems components such as marine mammals. All potentially strike at the heart of the socioeconomic fabric of the fisheries and the communities that depend on them. Nevertheless, the Council has stepped up to the plate and made some very tough policy calls.

During the last reauthorization, our Council Chairman identified six critical issues before the Senate Committee on Commerce, Science and Transportation: (1) high seas salmon interceptions and Donut Hole fisheries, (2) inadequate data, (3) limited access, (4) bycatch problems, (5) inshore-offshore priorities, and (6) full utilization. Council progress on each of these issues is summarized in Attachment 1.

In general we have high seas salmon interceptions and unrestrained foreign fisheries for pollock in the Donut Hole under control. Our observer program is providing comprehensive data and soon will be supported by the fee system you authorized in 1990.

The Council and Secretary of Commerce have approved a share quota system for the sablefish and halibut fixed gear fisheries off Alaska to be implemented in 1995 or sooner. That program received more analysis and public input and took longer than any other initiative of the North Pacific Council. We also have approved a moratorium on further entry to the groundfish and crab fisheries, and are developing a comprehensive rationalization plan for those fisheries to be implemented in 1996.

Bycatch problems still exist, but at least they are more under control than three years ago. In the long run the most effective solutions may involve individual bycatch quotas for vessels. We will consider that type of measure in our comprehensive rationalization plan.

We also have moved forward with inshore and offshore allocations of Pacific cod and pollock. That program will expire at the end of 1995. It includes an innovative development quota program to improve the economic and social well-being of disadvantaged Western Alaska communities in the Bering Sea area.

Full utilization is an emergent issue that will gain considerable attention in the next few years. The Council has already banned pollock roe-stripping and will be considering other actions to control non-target catch and waste.

Council actions on these and other issues are elaborated further in Attachment 2, an adaptation of my presentation to a law symposium last October on how well the Magnuson Act is working. I also review there the opinions on the role of the Councils in fisheries management as expressed by such statesmen as Senators Magnuson and Stevens, and Congressmen Forsythe and Leggett, who addressed the very first meeting of all charter fishery council members in Arlington, Virginia, in September 1976.

The North Pacific Council has not yet developed a position on reauthorization issues. They will, however, be closely following the major issues as they are identified in debates and hearings around the country. After the major issues have focused, I'm sure the Council will want to convey their views to you.

Thank you for inviting the Councils to testify early on in the reauthorization process. I would be happy to answer your questions about issues and actions concerning my Council.



**WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL**

## **Recommendations for Amendments to the MFCMA by the Western Pacific Fishery Management Council**

### **1. INTRODUCTION**

The Western Pacific Fishery Management Council is responsible for nearly 1.5 million square miles of EEZ waters surrounding American Samoa, Guam, Hawaii, the Northern Mariana Islands, and other U.S. islands in the Pacific. Fisheries in this region have experienced rapid growth in recent years. The region is unique because many fisheries are still in their development phase with stocks not yet fully exploited. The vast size of this region represents a tremendous economic potential and also presents management problems that are quite different from other Council's jurisdiction. This potential has been estimated by NMFS as 19% of the nation's total potential production, second only to the Alaska region. (This concern is more clearly illustrated in the short appended document-- "Valuing U.S. Western Pacific Fisheries: The Need for Increased Management Support".)

The following is a brief highlight of some of the more important reauthorization issues from the perspective of the Western Pacific region.

### **2. PURPOSE (Sec. 2)**

The Act should include language to conserve and manage habitats necessary for any life stage of sustainable fish stocks. For example, shallow nearshore areas serve as critical juvenile habitat for commercially valuable fish and their prey, as well as those species targeted recreationally and for subsistence. Implementation of this amendment would require that adequate funding be provided for habitat research and management, and be closely coordinated with other agencies charged with similar responsibilities (e.g., EPA, FWS, state agencies).

### **3. INTERNATIONAL TRANSBOUNDRY MANAGEMENT (Sec. 202)**

The economic value of pelagic fisheries to the Western Pacific Region is large and growing. Currently, activities on the high seas are subject only to international law. But this does not adequately address concerns such as lucrative tuna and billfish stocks that have complex migratory behavior. International collaboration is needed in the central and western Pacific to effectively achieve both local and Pacific-wide conservation and sustainable production goals. International cooperation is needed

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A Council Authorized by the Magnuson Fishery Conservation and Management Act of 1976

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in the areas of collection and exchange of data, clearly defined management objectives, and the implementation of multinational management authority that includes resource assessment, research, monitoring and enforcement. In this way the conservation of these stocks can be ensured and the economic benefit to the USA can be maximized.

The Western Pacific Region concurs with the recommendations for mandating the Secretary of State to negotiate favorable international fishery agreements that determine and implement maximum levels of catch that are biologically sustainable for widely migratory pelagic transboundary stocks.

#### **4. NATIONAL STANDARDS: Stock Restoration (Sec. 301(a))**

Language should be included that more precisely and quantitatively defines successful compliance in terms of stock conservation and restoration. Important parameters for measurement of success should consider biological, ecological, economic and social attributes. Restoration efforts should remain in effect until stocks are restored to optimum sustainable yield.

#### **5. REGIONAL FISHERY MANAGEMENT COUNCILS: Representation Changes (Sec. 302(a))**

Council representation should remain as is-- that is made up members from within the Region and not include harvesters from outside the Region. We propose that no changes be made to the Magnuson Act in this regard.

#### **6. REGIONAL FISHERY MANAGEMENT COUNCILS: Appointment Procedure (Sec. 302(b))**

In the face of tightening federal allocations, Council membership should not be expanded to accommodate representatives from the potential multitude of different user groups and concerns. We believe that the Secretary of Commerce is sufficiently able to select the most appropriate members from among three applicants knowledgeable in fisheries as recommended by the governor.

Council members selected to represent the commercial fishing industry should derive most of their total income from fishing related occupations.

#### **7. RECOGNITION OF INDIGENOUS FISHING RIGHTS (Sec. 302(h))**

Fishery resources in the waters of the EEZ have always played an important role in the cultural, social and economic lives of indigenous people of the American-flag islands. Unlike many other areas of the United States, indigenous people make up a

significant portion of the populations of these islands. Twenty percent of the residents of Hawaii are of native Hawaiian ancestry. In Guam, 43 percent of the residents are of Chamorro ancestry. In the Commonwealth of the Northern Mariana Islands 34 percent of the residents are of Chamorro and Carolinian ancestry. Eighty-nine percent of all American Samoan residents are native Samoans. For these reasons, the Western Pacific Council has been actively examining ways in which to incorporate indigenous fishing rights into the management of Western Pacific fisheries. At present, neither the MFMCA nor other federal legislation explicitly grants authority to establish preferential allocation of fishery resources to indigenous people.

We propose that the MFMCA be amended to explicitly require that indigenous fishing rights be recognized in the preparation of fishery management plans within the Western Pacific region. This may be most easily done by amending Section 302(h)(1) [16 U.S.C. 1852(h)] by inserting immediately after the semi-colon the following: "...provided that the Western Pacific Fishery Management Council shall take into account indigenous fishing rights in preparing any such fishery management plans;"

#### **8. REGIONAL FISHERY MANAGEMENT COUNCILS: Habitat (Sec. 302(ii))**

The Western Pacific Council supports the recommendation for Regional Councils to have a stronger role in commenting on issues that may potentially impact critical habitat upon which fisheries are dependent. Authority should be given the Councils to effect present and proposed activities that pose a risk to the quality of marine habitats.

#### **9. REGIONAL FISHERY MANAGEMENT COUNCILS: Disclosure of Financial Interest (Sec. 302(k))**

The Western Pacific Council believes that further amendments are needed regarding the issue of financial disclosure requirements. Due to the diversity among regions, such concerns should rather be reviewed by each respective Council with recommendations to deal with the issue made locally.

#### **10. FISHERY MANAGEMENT PLANS (Sec. 303)**

Pertinent Data. As elsewhere, a major problem in the Western Pacific Region is the lack of sufficient data and information on the stocks and fisheries upon which to base rational management decisions. This problem has constrained Council staff and advisory groups from responding adequately to numerous issues and requests. In many fisheries, the most basic fishery data are lacking or inadequate to understand the dynamics of the fishery. Inadequate Council and NMFS funding is a primary cause of the poor data situation.

In addition, state databases are typically poorly maintained or lack the necessary information required for management decisions. State fishery programs are also under funded in the area of collection of basic data. Incompatibility and redundancy of state and federal catch reports is also a problem in some fisheries.

In Hawaii, data from the large recreational and subsistence components of the fisheries are nonexistent. Total landings by recreational anglers may rival or exceed that of commercial operations in some fisheries.

The Act should be amended to ensure that adequate funding is provided to the Councils and NMFS so that the best data is available upon which to base management decisions. Further, where state data collection programs are deemed inadequate, the Secretary should mandate federal licenses and data collection programs be implemented for both state and federal waters.

Import Problems. The social and economic impacts of imported fish in competition with domestic management species should be addressed in all FMPs and amendments. For example, restrictions on Hawaiian caught bottomfish and lobsters would pave the way for establishment of sizable market niches from South Pacific countries. Emphasis here should be placed on measures that conserve the health of local stocks and economic opportunities.

Guidelines for Limited Access Systems. The Western Pacific Council opposes the recommendation that the Secretary of Commerce designate limited access programs. Consideration of limited access systems should remain the purview of the respective Regional Councils.

#### **11. SECRETARIAL ACTION: Regulatory Process (Sec. 304)**

The Western Pacific Council supports recommendations to modify the regulatory process to expedite the period for Secretary to act on submitted regulatory amendments. Redundancy with other applicable laws should be reduced or eliminated.

#### **12. SECRETARIAL ACTION: Fee Collection (Sec. 304(d))**

Acquiring sufficient resources to handle the diverse and demanding responsibilities has traditionally been one of the main constraints of the Western Pacific Council. Many management tools designed to optimize fishery yield limit the access to, or use of, public marine resources to a select group of individuals. The primary benefits of successful management go to the fishermen or resource users. The cost of management should be shared with this group. This could be done through accessing a transfer tax on limited entry permits, levying a landings fee or charging more for annual fishing licenses and fees for recreational licenses.

For all Regional Councils except the North Pacific, the Magnuson Act does not allow for user fees to be assessed beyond the cost of processing permits. Even then, the fees must be returned to the general treasury and do not directly help to defray the costs of administering the permits, much less managing the fishery.

In the 1990 amendments to the Act, provisions were included to allow for collection of fees for a dedicated fund to finance a North Pacific Fishery Management Council fisheries research plan using observers. The Western Pacific Council strongly supports an amendment to establish and collect user fees that are dedicated to partially fund the costs of implementing and maintaining fishery management plans in all areas. Areas requiring improved levels of funding include stock assessment and research, monitoring and enforcement, and development and implementation of management plans.

### **13. SECRETARIAL ACTION: Highly Migratory Species (Sec. 304(f))**

Unlike the situation in the Atlantic, the Western Pacific Council is responsible for managing highly migratory species (tuna and billfish) in our region. Provided sufficient funding is forthcoming, we are on track toward better understanding of the dynamics of these important stocks and improved management.

We concur with proponents for the return of the management of highly migratory species to the other Regional Councils.

More emphasis should be placed on giving regional councils flexibility in participating in the negotiating process for international agreements on highly migratory species. Joint programs for data collection and sharing, sustainable productivity, and joint enforcement should be seriously considered.

### **14. SECRETARIAL ACTION: Waste and Bycatch Concerns (Sec. 304(g))**

The bycatch situation in the Western Pacific is very different than that in some other parts of the nation. However, gear interactions with protected and endangered species (turtles, seabirds, monk seals) poses more serious problems. In addition, catch competition between gear types is seen as bycatch by some sectors. Funding is required to study these problems. Possibly charging a sizable tax or fine on bycatch would provide a disincentive to reduce such fishing practices. Possibly a mechanism could be implemented to distribute consumable bycatch landings to economically disadvantaged citizens.

### **15. STATE JURISDICTION: Preemption Authority (Sec. 306(b))**

Some states, territories and commonwealths in the Western Pacific Region have traditionally been slow or unwilling to respond with measures for data collection and

enforcement that are compatible with those established for federal waters by the Council. Federal preemption of state management, where necessary, is needed facilitate the protection and management of economically valuable marine resources of the Western Pacific. Such preemption should be allowed even where the resource occurs within the jurisdiction of a single state, where the state has failed to respond adequately to overfishing indicators.

#### **16. ENFORCEMENT (Sec. 311)**

Regular monitoring and surveillance of fishing activities with enforced compliance is essential for any management plan to be effective. The EEZ of the Western Pacific Region covers nearly 1.5 million square miles of ocean, yet there are only five NMFS agents for the entire region. Under current substandard levels of funding enforcement tasks cannot begin to be properly implemented. With an appropriate structure of licensing fees and fines for violators, costs of enforcement can be partially self-funded. The viability of the resource will also be enhanced as the intentions of scientifically based management are achieved. However, economic returns necessarily lag behind the initial costs of implementing effective enforcement capabilities.

The Act should be amended to provide for adequate funding for enforcement so the best conceived management plans can be successful. This will provide for development of a much needed vessel monitoring system (VMS), increased enforcement personnel and additional monitoring and surveillance time.

#### **17. AUTHORIZATION OF APPROPRIATIONS (Sec. 402)**

The vast size of the Western Pacific Region represents a tremendous economic potential. In recent years the region's commercial fish catch was estimated to have a retail value of over \$200 million annually. An estimated 80% of this value is attributed to the migratory pelagic species. The recreational and subsistence fishery sectors are difficult to quantify but are estimated to contribute additional tens-of millions of dollars per year, and are growing. In the past six years, the commercial value of the Western Pacific Region's fisheries have more than doubled. In contrast, the fraction of this value spent on management of these valuable resources has actually decreased by over 30 percent in this same period. For the Western Pacific Council to effectively meet its management responsibilities, our funding allocation must correspondingly be increased. Operational costs of the Western Pacific Council are proportionally higher than other Regional Councils due to the great distance within the Region (American Samoa, Guam, Hawaii) and travel distance to the nation's capitol. Further, the Highly Migratory Species Office (i.e., the "9th Regional Council") has appropriated money and staff positions to manage highly migratory species, whereas the Western Pacific Council received no funds for this purpose. The Western Pacific Regional Fisheries Management Council has estimated that an



annual budget of \$1.5 million is the minimum needed to cover their current level of responsibilities adequately.

Only with sufficient funding will the Regional Councils be able to develop and monitor the management regimes necessary to assure the optimal utilization of the nation's fishery resources and the attainment of potential long-term yields. Alternatively, the potential loss of fishery derived income to the national economy would be unfortunate.

Language should be included in the Magnuson Act's reauthorization that provides for adequate funding of the Councils, based upon their respective needs, to effectively accomplish their diverse and growing demands for managing our national marine living resources in an economically prudent manner.

#### **18. MISCELLANEOUS ISSUES: Marine Mammals and Endangered Species**

We support the approach for integrated ecosystem management. Recent reduction in the size of the endangered Hawaiian monk seal population has been attributed to limited fish food availability. This has not been linked to fishing activity (long-term environmental changes are believed to be responsible), but it is critical that adequate funding be provided for the continued study and protection of endangered and protected marine species, and their interaction with fisheries.

TESTIMONY OF  
**PACIFIC FISHERY MANAGEMENT COUNCIL**  
ON REAUTHORIZATION OF THE  
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
MERCHANT MARINE AND FISHERIES COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
MARCH 3, 1993  
WASHINGTON, D.C.

Chairman Manton and other members of the Subcommittee, thank you for this opportunity to provide written testimony on our views concerning appropriate amendments to the Magnuson Fishery Conservation and Management Act (Act). Regrettably, we were unable to attend this hearing, but respectfully request that these written comments be made part of the record.

The Pacific Fishery Management Council has not had an opportunity to discuss specific amendments this year, thus our comments will be of a general nature and reflective of past concerns which are still major problems today.

In testimony to this body in May 1989, the eight council chairmen unanimously recommended that Congress strengthen our collective ability to influence actions which will restore, maintain and protect fishery habitat. Given the rate at which habitat is being degraded and the increased listings of fish stocks under the Endangered Species Act, the need for action is even more critical today. To manage West Coast anadromous fish effectively, we must manage land, water and harvest in a coordinated fashion with the common objective of rebuilding these stocks. Comprehensive, pro-active measures are needed to prevent further listings. As a council, we can control the ocean harvest only. These stocks will not be rebuilt through harvest management alone. The Congress and the Administration need to take an aggressive posture on this issue. Innovative solutions may be required. We stand ready to work with you to devise appropriate solutions. To us, this is the most important issue requiring your attention. If we don't have fish habitat, we don't have fish.

The second most important issue is funding for research, data collection, enforcement and management programs. National Marine Fisheries Service (NMFS) has not been given enough money to carry out the various mandates from Congress. This situation is going to get worse before it gets better, given the size of the budget deficit. We can spend a lot of time tinkering with the Magnuson Act. But if NMFS and the councils cannot conduct the basic stock assessments, collect the basic fishery information, and hold the necessary meetings, the system won't be able to make good fishery management decisions regardless of how it is constituted. The fish stocks will suffer and so will the people that depend on them. Fishing effort is increasing dramatically across the country, while many fish populations are declining. This situation creates a greater need for more information and more intensive management measures, including allocation, limited entry and observer programs. Additional funds will be needed to do the job. The Subcommittee should take a serious look at how to finance these programs in a time of declining general fund appropriations. Again, innovative approaches may be called for.

One specific recommendation that we have at this time is that the Act be amended to include a time limit for Secretarial action on regulatory amendments submitted by councils. Currently there is a statutory time limit for plans and plan amendments, but not regulatory amendments. This has resulted in a situation where regulatory amendments may take longer to implement than plan amendments. We can cite several examples of long delays in approval of our regulatory amendments.

Thank you for this opportunity to submit comments. We look forward to working with the Subcommittee to improve management of our nation's marine fisheries.

STATEMENT OF THE  
MARINE FISH CONSERVATION NETWORK  
STEERING COMMITTEE  
GERALD LEAPE, GREENPEACE  
DAVID ALLISON, CENTER FOR MARINE CONSERVATION  
MICHAEL SUTTON, WORLD WILDLIFE FUND  
CARL SAFINA, NATIONAL AUDUBON SOCIETY  
KEN HINMAN, NATIONAL COALITION FOR MARINE CONSERVATION

BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE  
US HOUSE OF REPRESENTATIVES  
COMMITTEE ON MERCHANT MARINE AND FISHERIES

AT A HEARING ON THE REAUTHORIZATION OF  
THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

MARCH 3, 1993

Mr. Chairman,

This statement is a collaborative effort of the steering committee of the Marine Fish Conservation Network. The Steering Committee consists of representatives from the following organizations: The Center for Marine Conservation, Greenpeace, The National Audubon Society, The National Coalition for Marine Conservation and the World Wildlife Fund. This group was drawn together by a common objective maintaining viable fish populations in our exclusive economic zone through elevation of conservation to a priority in all fishery management decisions. What follows is our common agenda, a statement of principles if you prefer, that details many of our objectives for the reauthorization of the Magnuson Fishery Conservation and Management Act.

If any group, organization or other entity, that is interested in the future of US fisheries management, agrees with all or any one of our objectives for reform of the way the US manages its fisheries, we invite them to work with us to achieve our mutual goals.

A NATIONAL AGENDA TO PROTECT, RESTORE  
AND CONSERVE MARINE FISHERIES

PRIORITIES

- I. Eliminate overfishing and rebuild depleted fish populations
- II. Adopt a precautionary, risk averse approach to fisheries management
- III. Reduce conflicts of interest on the fishery management councils
- IV. Improve conservation of large pelagic fishes
- V. Minimize bycatch problems
- VI. Protect marine habitats
- VII. Enhance monitoring and enforcement
- VIII. Provide adequate funding for fisheries research and enforcement

ELIMINATE OVERFISHING AND REBUILD DEPLETED FISH POPULATIONS

As the National Marine Fisheries Service states in the agency's 1991 Strategic Plan: "It is better to prevent overfishing than to suffer the losses necessary to reverse it." However, in nearly all cases today, managers are reacting to overfishing not preventing it.

A basic flaw in the Magnuson Act is that it doesn't clearly define or expressly prohibit overfishing. Instead it directs managers to prevent overfishing while achieving the "optimum yield" from each fishery, broadly defined as the amount of fish that can be taken in a sustainable manner "modified by relevant, social, economic and ecological factors."

In practice, the basic biological needs of the resource are often allotted less consideration than the immediate needs of fishers. As a result, overfishing is permitted in the name of short-term economic gain. For the same reasons, there are few effective recovery plans for depleted fisheries, hence some severely overfished populations continue to be overfished.

Marine fish are a public resource that no group should be permitted to misuse. Conservation and management measures to prevent overfishing and rebuild depleted fish populations must be given priority over any other considerations. Management plans for each fishery should contain a clear, measurable definition of overfishing as well as measures to prevent that condition from occurring.

In the case of depleted fisheries, recovery plans should establish specific rebuilding goals and specific timetables for achieving those goals. Although there will be short-term social and economic impacts associated with rebuilding fisheries to a healthy state, over the long-term the increased yield from

restored populations will provide the greatest benefit to the nation as a whole, and the fishing industry will be the primary beneficiary.

#### ADOPT A PRECAUTIONARY, RISK-AVERSE APPROACH TO FISHERIES MANAGEMENT

The framers of the Magnuson Act recognized in 1976 that certainty is a rare commodity in fisheries science and so instructed managers to base their decisions on "the best scientific information available" at the time. They also intended that, in order to prevent overfishing, management measures should contain a built in buffer against uncertainties in the science and other unknowns.

But in their unending struggle to strike a balance between conservation and the immediate financial interests of fishers, decision makers typically choose to err in favor of fishing. "In the face of uncertainty and pressure from the fishing industry," the National Marine Fisheries Service points out (1991 Strategic Plan), "fishery managers have often tended to base their decisions on an optimistic view of the condition of fishery resources. These "risk-prone " decisions result in overfishing."

Better science would help increase the accuracy and reliability of the information available to managers. But when uncertainty exists, the risk of overfishing can be reduced by giving the

benefit of the doubt to fish conservation, i.e., making "risk-averse" decisions, instead of erring towards overfishing.

Conservation and management measures should minimize risk by providing a margin of safety to act as a buffer against overfishing and damage to associated species and ecosystems. Additionally, the burden of proof to demonstrate that damage will not occur should be on those who would exploit fish, not on those charged with conserving them.

#### REDUCE CONFLICTS OF INTEREST ON FISHERY MANAGEMENT COUNCILS

When Congress created the regional fishery management council system, it wanted those persons active in the fisheries being managed to be a part of the process so that decisions could benefit from their knowledge and experience. This is both a major strength and a major weakness of the Act.

Council members include fishing vessel owners, commercial fishers and fishing industry employees with an immediate financial stake in the fisheries they regulate. This amounts to a classic conflict of interest, and because of it, councils have frequently failed to adopt timely and effective management measures.

Fishery management benefits from the advice of active fishers. But fishers serving as council members should not be permitted to vote on matters relating to or in any way influencing a fishery



in which they have a direct or indirect financial interest. More individuals unaffiliated with any user group, but knowledgeable about fisheries and the marine environment, should be appointed to serve on the councils to enhance their effectiveness as well as to ensure fair representation of the broad public interest.

#### IMPROVE CONSERVATION OF LARGE PELAGIC FISHES

Effective management of the large, ocean-wandering predators - the tunas, sharks and billfish that occupy the top of the ocean food chain - has been especially elusive. As a result of poor management and related overfishing, the large pelagic fishes (defined as "highly migratory species" in the Act) are among the most at-risk fish in the sea.

In the Atlantic, for instance, the bluefin tuna's breeding population has declined 90% since the mid-1970s. The number of adult swordfish has been reduced by half in even less time; the majority of swordfish are caught by fishers before they've reached reproductive age. Marlin, killed primarily as bycatch in tuna and swordfish fisheries, are declining in both the Atlantic and the Pacific. A modest plan to protect sharks in the Atlantic and Gulf of Mexico that, we hope, will take effect in 1993 will impose the first-ever federal limits on shark fishing, despite grave concerns that some species may have already been devastated by excessive fishing.

Until 1990, the tuna fisheries (along with their bycatch of billfish and sharks) were unregulated under the Magnuson Act. That year, Congress gave the Pacific Ocean management councils authority over tuna, but transferred responsibility for all highly migratory species in the Atlantic Ocean to the National Marine Fisheries Service. NMFS, however, is prohibited from enacting measures to conserve Atlantic large pelagics that are stricter than those recommended by an international commission. Yet throughout its 25 year history, the International Commission for the Conservation of Atlantic Tunas has failed to keep catches at sustainable levels or to stem ongoing declines.

International cooperation to enhance the conservation of large pelagic fishes throughout their range is essential. The U.S. should more aggressively pursue, through ICCAT and other international bodies, the conservation objectives established in the Magnuson Act. But because of the poor record of international fisheries treaties to date, the U.S. must remove any constraints on its authority to enact more conservative measures for its own fleet when these actions are in the best interests of American fishermen and the health of the resources they depend on.

#### MINIMIZE BYCATCH PROBLEMS

The use on non-selective fishing gear - essentially, any type of gear that catches large amounts of unintended fish and other

marine species - cause intolerable waste and serious conservation problems. Worldwide, discarded bycatch amounts to an estimated 12 to 20 billion pounds of sea life every year, or 20% of the overall catch.

Examples of non-selective gear include large scale high seas driftnets that catch virtually anything that tries to swim through the netting, or trawl nets that are used to drag the ocean bottom, scooping up all species in the path of the net. Perhaps the most egregious example is the Gulf of Mexico shrimp trawl fishery, where 9 to 11 pounds of juvenile fish are caught and thrown overboard for every pound of shrimp that is taken.

The astronomical number of fish killed as bycatch, usually unreported, is not just a problem of waste. Bycatch contributes to overfishing. For instance, red snapper in the Gulf of Mexico, one of over a hundred species caught in shrimp trawls, is severely depleted primarily because of the enormous number of young fish killed as bycatch.

The Magnuson Act is largely silent on the subject of bycatch and dead discards. Bycatch is restricted only where it threatens a species protected under a non-fishery statute (e.g., dolphins, sea turtles) or where it includes species highly valued and sought after by competing fishers.

The Magnuson Act should include a definition of undesirable

bycatch and make it a national policy to minimize the negative impact of bycatch on fish populations and the marine ecosystem. Researchers should accumulate better data on the extent of the bycatch and its impact in each fishery, and managers should include provisions to reduce the incidental capture of fish and other marine animals in all fishery management plans.

More research needs to be conducted in the area of gear selectivity, including the development of bycatch-reducing technologies. Management strategies should include incentives for fishers to increase gear selectivity or use more selective methods of fishing.

#### PROTECT MARINE HABITATS

The continuing loss and degradation of fish habitat to pollution, development, population pressures and other human activities - could become the greatest long-term threat to the future viability of coastal marine fisheries. Damage to estuaries, wetlands, seagrass meadows, reefs and river systems are leading factors in the decline of many shore-dependent and anadromous species.

Major threats to fish habitats are:

- \* Destruction - over half of our coastal wetlands, essential habitat to 75% of the nation's marine fisheries, have been destroyed.

\* Pollution - contaminants effect spawning behavior, survival of young fish, and the incidence of deformities and tumors. They also threaten human health.

\* Nutrient overload - Agricultural runoff and dumping of untreated sewage triggers massive increases in algal growth, choking off sunlight to bottom-dwelling organisms and depleting the water of life-giving oxygen.

\* Water diversion - In some river systems, dams have eliminated 80-100% of the migration routes for salmon, striped bass, shad and other marine species that spawn in fresh water. Excessive diversions of water from bays and estuaries destroy important spawning and nursery ground for numerous coastal fish.

The Magnuson Act gives neither the National Marine Fisheries Service nor the fishery management councils direct control over these activities, even though they may severely reduce fish abundance.

The U.S. should adopt and implement a strong national habitat protection program to preserve the productive capacity of fish habitats. The program should include research to quantify fishery-related habitat values and require certification that federally -approved projects will not harm essential fish habitats. The National Marine Fisheries Service should have authority to modify, restrict or prohibit projects or activities which will alter, degrade or destroy essential fish habitats.

## ENHANCE MONITORING AND ENFORCEMENT

To properly manage fisheries, regulations must be enforceable and the total fish catch accurately tabulated. But few fisheries in the U.S. are subject to onboard observer coverage, catch data are supplied by the harvesting vessels or processors, usually on a voluntary basis. Consequently, this information is generally inaccurate and incomplete.

More precise and reliable data on catch and effort, as well as fishery-independent information, must be made available to fishery scientists for the purpose of assessing population sizes, and to fishery managers for the purpose of regulating fishing activities.

As management plans are now written, most regulations must be enforced at sea. With a small force of agents burdened with a mounting number of rules to enforce and fishers to enforce them upon, violators know the chance of being caught are slim. As a result, compliance with fishery laws is poor in some fisheries, almost non-existent in others.

Funding for monitoring and enforcement activities must be increased. A universal licensing scheme is needed to give managers the information they need on who's fishing when, where and how and what they are catching. A comprehensive at-sea observer program to monitor commercial fisheries would help

provide unbiased and detailed information on fishing activities as they occur. The presence of observers on fishing vessels is necessary for adequate enforcement. In the future, managers should be required to rely less on measures that must be enforced offshore and more on rules that enforceable at the dock or at the point of sale.

#### PROVIDE ADEQUATE FUNDING FOR FISHERIES RESEARCH AND CONSERVATION

Of the 153 species of fish whose status has been assessed by the National Marine Fisheries Service, 42% are overfished. But the status of more than a third of the species under Magnuson Act jurisdiction is unknown due to lack of funding for basic research. Even where general population trends are known, the data are often imprecise. This imprecision in assessing fish abundance undermines the ability of managers to respond to overfishing in a timely and effective manner.

There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of harvest, both commercial and recreational, fish discarded as well as landed. As managers propose quota-based and limited entry management programs, the need for more accurate and precise information becomes acute.

These research and information shortfalls are largely the result

of chronic underfunding. So is the poor state of habitat and ecosystem-based studies. Because fish do not live in a vacuum, we need to better understand the interdependent relationships in their environment. This means studying predator/prey interactions (both fish/fish and mammal/fish) and the effects of selectively and intensively removing certain species from an ecosystem. Research is needed to assess the effects of altering the physical and chemical environment on fish behavior, growth feeding and reproduction.

Essential research has been held up by years of inadequate funding. Funding for management -related scientific research and data collection should be increased, along with funding for monitoring and enforcement. To the extent, that new appropriations are not available in sufficient amounts, the needed money should be obtained through re-prioritizing existing funds and developing new, innovative sources of funding.

Presently, fishers pay no fees to the federal government to exploit publicly-owned resources. Congress should consider user fees and/or excise taxes on the landed value of fish.

Compensatory revenues should be deposited in a trust fund dedicated to supporting research, management, enforcement and other fundamental fisheries programs.



## CONCLUSION

Too many of the nation's economically important commercial and recreational fishes are depleted or in decline, producing far below their biological potential. While each year new species are added to the growing list of those that are overfished, efforts to restore depleted populations are slow and ineffective.

The price we are paying for poor management is more than we can afford. In New England alone, the annual cost of overfishing the nation's oldest fishery-cod and flounder-is estimated at \$350 million. That 's almost twice the annual budget of the National Marine Fisheries Service. Nationally, commercial and recreational industries, jobs lifestyles, quality of life and the quality of our environment hang in the balance.

Thank you again for the opportunity to introduce the Marine Fish Conservation Network and its Agenda to you and the other members of the subcommittee. We look forward to working with you to strengthen the Magnuson act through this reauthorization.

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 WASHINGTON • ZURICH

# GREENPEACE

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STATEMENT OF  
 GREENPEACE  
 BEFORE THE SUBCOMMITTEE ON  
 FISHERIES MANAGEMENT  
 OF THE  
 COMMITTEE ON MERCHANT MARINE AND FISHERIES  
 OF THE  
 U.S. HOUSE OF REPRESENTATIVES  
 ON THE  
 REAUTHORIZATION OF THE  
 MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

MARCH 3, 1993

SUBMITTED BY

PENNY PAGELS  
 FISHERIES CAMPAIGNER

R E C Y C L E D P A P E R

On behalf of Greenpeace and its approximately 1.8 million supporters here in the United States, it is with great pleasure that I provide you with comments on the imminent reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA). As are you are well aware, Greenpeace has been involved in fisheries issues both on the high seas and within our nation's 200-nautical mile Exclusive Economic Zone (EEZ).

Specifically, I would like to bring to your attention the critical need for transforming the way in which the nation's fisheries are managed. There is room for reform in nearly all of the 8 regions of this country, both in the National Marine Fisheries Service (NMFS) and in the regional councils.

In this testimony, I will focus on the North Pacific Fishery Management Council but the recommendations are far-reaching and should be put forward in all of the regions.

#### THE LARGEST, MOST PRODUCTIVE FISHERY IN THE UNITED STATES.

In Alaska, the biological and economic health of the fisheries are threatened by overcapacity due to the largely unrestricted access to the fisheries. Consequences of overcapacity are obvious and are highlighted by: short and disorderly fishing seasons, intense pressure on agencies to slacken fishing regulations, quota overfishing, reduced profitability and wasteful fishing practices. The NPFMC is dominated by voting

members with direct, immediate economic interests in the fishery. Measures to reduce overcapacity and to promote conservative and selective fishing practices are likely to become stalled due to the short-term, economic self-interest of the Council. Until this fundamental problem of unbalanced industry self-management is corrected, conservation issues will not be addressed.

Populations of most commercially valuable fish species in the North East Pacific have been overfished during the last three decades and certain stocks still remain depleted. In others where intense commercial exploitation is recent, biomasses are following declining trends. The composition of major species in the groundfish community has undergone significant changes over time that are associated with sustained intense fishing pressure.

Additionally, because target fish species do not exist in a vacuum, the continued extraction of large amounts of fish for several decades appears to have affected the abundance and condition of populations of other marine species. Available information shows that the dramatic declines in some populations of marine mammals and sea birds occurred simultaneously to the intensification of commercial fishing operations in the 1960s and 1970s. Whereas there may be lack of consensus as to the primary cause of these declines, currently pollock appears to be a common denominator to most of them. The perception is growing

that the pollock population cannot sustain current levels of fishing and natural predation.

#### GUILTY BY ASSOCIATION: THE NATIONAL MARINE FISHERIES SERVICE

The rationale of the National Marine Fisheries Service (NMFS) to maintain its role as single-species managers can be no longer tolerated. NMFS acknowledges that the levels of exploitation are unknown for 34% of the species subject to exploitation in US waters and that abundance trends are unknown for 51% of the marine mammal species that occur in US waters. As NMFS admits, the unfortunate consequence is that such lack of precision and knowledge in assessments of fishery resources is often used to argue that the evidence of over-exploitation is not strong enough to justify restricting a fishery. This argument has led to the depletion of many stocks. Approximately 65 of 153 species or species groups for which status has been assessed by NMFS are over-exploited. The status of marine mammals and sea turtle populations is also cause for concern. Of the 37 stocks for which status is known, 13 are classified as endangered, 6 as threatened, and 1 as depleted. Trends in abundance are only known for 15 stocks and half of them are declining.

#### THE PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT

The precautionary approach is an effort to employ prudent forethought to minimize the risks posed by living marine resource

exploitation to ocean ecosystems. The precautionary approach recognizes that there are large gaps in the fundamental understanding of dynamics of living marine populations and of the ecosystem of which they are a part. In order to change the focus of fisheries management away from single-species and towards multi-species, there are major obstacles to overcome. It is widely recognized that uncertainty in both fishery data and environmental conditions affecting fish population dynamics, constitutes a major obstacle to effective management. Because of this, a precautionary approach to the interpretation of survey and stock assessment results, as well as to fishery management decisions is of primordial importance.

Fisheries management to date has not taken into consideration interactions between the dynamics of target species and the ecosystem they inhabit. This single-species approach is myopic and ignores that marine species do in fact interact. Consequently, this approach has not been conservative enough to buffer the negative effects of fishing on the various components of the ecosystem. Multi-species modeling is data intensive and expensive to develop, however, the need for change is apparent since it is increasingly recognized that the dynamics of a fishery are not solely determined by intrinsic population factors, but by both biotic and abiotic factors.

#### A NEW APPROACH

In face of major ecological and economic questions, there is a need to critically examine new schemes. These schemes would require a much broader look at the functioning of the various parts of the ecosystems, away from the few commercially exploited species, and consideration of long-term economic benefits, away from short-term gains. In order to apply rational, sustainable, ecosystem based management of living marine resources the focus of research must change. By encompassing food chain dynamics, environmental variations, and anthropogenic changes, the research element would be broadened.

#### SUGGESTED RESEARCH PRIORITIES:

- 1) a systematic collection of fish catch data that gathers accurate information on catches, species composition (including bycatch, discards mortality), marine mammal interactions, fishing effort;
- 2) studies on indicator species that may provide signs of ecosystem changes, behavioral studies, ecosystem effects of the release of offal (e.g. increase of scavenger species, increased biological oxygen);
- 3) time series of measurements in the form of standardized multi-species resource assessments and hydrographic surveys;
- 4) studies on energy transformations within lower trophic levels,

organic matter flux to the seabed, flux of elements between seabed and water column, and transformations of bacterial production to higher trophic levels;

5) improve understanding of interannual variations in primary and secondary productivity and of its causes.

#### CONCLUSION

In order that the MFCMA is properly reauthorized, it would be prudent to recognize the strategy as put forward by the NMFS in its Strategic Plan for the Conservation and Wise Use of America's Living Marine Resources. Although well intentioned, this plan has yet to be implemented.

In order to improve management efforts, well designed environmental impact statements must be rewritten that address and evaluate the interspecific relationships of species and the changes in abundance relative to commercial fisheries. When information is not available then a margin of safety must be added in favor of the ecosystem. If fisheries are to be sustainable, a fundamental change must occur now. Difficulties to be encountered in incorporating a holistic approach cannot be a justification for inaction. The future of this nation's fisheries, both economically and ecologically are at risk.





**STATEMENT OF THE  
WORLD WILDLIFE FUND**

**BEFORE THE**

**SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE  
US HOUSE OF REPRESENTATIVES  
COMMITTEE ON MERCHANT MARINE AND FISHERIES**

**AT A HEARING ON THE REAUTHORIZATION OF  
THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT  
OF 1976**

**MARCH 3, 1993**

**World Wildlife Fund**  
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Mr. Chairman,

On behalf of our 1.25 million members, we appreciate the opportunity to submit testimony for your March 3rd hearing on the reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The following statement will provide a general list of issues which WWF will seek to address in our proposals to amend the Magnuson Act. As a member of the Marine Fish Conservation Network, we intend to be an active participant in the reauthorization of the Magnuson Act during the 103rd Congress. We look forward to working with you and other interested parties to improve the Magnuson Act and to promote effective conservation of marine fisheries throughout the United States.

#### 1. Eliminating Overfishing and Rebuilding Depleted Populations

Currently, the United States is facing a crisis with marine fish species. Of the 156 species of fish whose status has been assessed by the National Marine Fisheries Service, 43% are overfished. The need to rebuild these populations has never been more pressing and should be given priority over all other considerations.

The Magnuson Act has been ineffective in preventing overfishing and has been a failure at rebuilding depleted fish populations. A key provision in the Act which has been largely responsible for this ineffectiveness is National Standard One, Section 301

(a), which directs fishery management councils to achieve the contradictory goals of preventing "overfishing," an undefined term, while achieving optimum yield, defined in Section 3(21) as maximum sustainable yield "modified by any relevant economic, social, or ecological factor".

WWF believes that the Act should be amended to separate the contradictory goals of National Standard One, define and prohibit "overfishing"; and prioritize the rebuilding of overfished or depleted populations. We recommend strengthening the existing procedure and guidelines to define overfishing (50 CFR 602.11) and incorporating them into the statute. To ensure the development of effective recovery strategies for overfished populations, we recommend that specific guidelines for the recovery of overfished populations be written into the Act, such as requiring the setting of detailed rebuilding targets and timetables. Congress should also consider providing statutory authority for the Secretary to intervene where a condition of overfishing exists and a Fishery Management Council fails to make such a determination and/or fails to develop a recovery plan in a timely fashion.

## 2. Relating the Precautionary Approach to Marine Fisheries

The precautionary (or risk-averse) approach requires that fishery managers employ prudent forethought to minimize the risks to marine populations and associated ecosystems posed by utilization of fishery resources. Specifically, the approach

requires that entities charged with the management of marine fisheries use the best available scientific information to minimize risks of harm to target populations and the associated species in the marine ecosystem. This approach places the burden of proof on those wishing to exploit marine fish populations to demonstrate convincingly that their activities will not cause harm to the target population or marine ecosystem. Further, the approach asserts that the financial burden for funding management-directed research should fall primarily upon those who benefit economically from the fishery. Finally, risk-averse management assumes that significantly more biological research needs to be undertaken on the relationships between target fish species, fishing activities, and other elements of marine ecosystems.

WWF recommends that the National Standards under Section 301 be amended to mandate a precautionary approach to Federal fisheries management. We would like to see the National Standards amended to require that management efforts address the effects of a given fishery on the marine ecosystem as a whole, not just on the target species. In particular, where sufficient information about the status of fish populations is lacking or impossible to collect, the National Standards should require building a generous margin of safety into fishery management plans. We would also like to see the precautionary principle incorporated in a similar fashion into the 602 guidelines, and would like Congress to consider codifying these guidelines into the statute.

We also believe that fishery managers must have the ability to implement changes in management in response to rapidly changing conditions. We believe that

changes in management in response to rapidly changing conditions. We believe that such authority -- for instance, to quickly and drastically reduce harvest in a particular season in response to new information on stock declines -- is a vital aspect of risk-averse management. During this reauthorization, we would like Congress to consider whether the regional councils are granted, under the current system, an appropriate level of authority to make risk-averse management decisions. Although there is clearly a need for some system of oversight and review of council decisions, WWF also recognizes that the most effective fishery management requires the flexibility to respond rapidly to changes in local conditions or other factors.

### 3. Addressing the Conflicts of Interest on Regional Fishery Management Councils

Presently, the voting bodies of all Fishery Management Councils are required to be made up of individuals who have knowledge of the conservation and management of commercial and recreational fisheries. Not surprisingly, in addition to knowledge about commercial and recreational fisheries, most Council members also have financial ties to those industries and therefore the harvest of marine fish. The only thing in shorter supply than New England groundfish are fishery council members whose livelihoods are not dependent upon the harvesting or processing of fish. The overwhelming presence of voting members who represent the commercial or recreational fishing industries -- usually as salaried employees, charterboat owners

or operators, or officers of industry cooperatives or associations -- creates, at least, the appearance of conflicts of interest, if not worse. The reality of these financial pressures may account, in part, for the failure of councils to adopt timely and effective conservation measures. Such members may find it difficult, at times, to exercise impartial judgment on management issues because they are directly or indirectly involved in occupations or organizations having a substantial financial stake in Council policy or allocation decisions. Similar conflicts may exist for state representatives who may have a bias towards commercial or recreational fishermen from their state.

The Magnuson Act currently does not discourage or prohibit council members from voting on issues where they have a conflict of interest. Nor does it require any minimum representation on Councils of individuals who are not economically tied to the catching or processing of fish. WWF believes that the Act should be amended to require council members to recuse themselves from voting on any matter relating to or in any way affecting a fishery in which they have a financial interest, or in which their immediate family members or the organization for which they work or hold office has a financial interest. Such amendments could be easily drawn from current federal laws such as 18 U.S.C. 208, which prohibits executive branch employees from acting in matters where they have a conflict of interest unless they make prior disclosure and a determination has been made that the conflict is not significant.

We also believe that the statutory requirements for membership of the regional councils should be changed. We would like to see the councils expanded to include

representation from other Federal agencies who play a role in fisheries management, such as the U.S. Fish and Wildlife Service, as well as representation from environmental organizations involved in the conservation of marine fish. During this reauthorization of the Magnuson Act, we would also like Congress to reconsider the need for voting council members [as set out in Section 302.(b)(2)(A)] to be knowledgeable and experienced in fishery management or the commercial or recreational harvest of fish. Our concern is that this requirement has served as a barrier that has kept citizens who are not associated with the harvest of marine fish off of Regional Councils. One way to reduce potential conflicts of interest on fishery management councils would be to require a mandatory minimum number of voting members who are not associated either directly or indirectly with the sport or commercial harvesting or processing of marine fish. We would also like Congress to consider changing the status of state representatives on the Councils from voting to non-voting members. We urge Congress to address these issues during this year's reauthorization proceedings.

#### 4. Improving the Management of Highly Migratory Species

Because of the pervasive absence of responsible management of pelagic species, such as tunas, sharks, and billfish, by the Fishery Management Councils, NMFS, and international fisheries commissions such as ICCAT, many of these highly migratory

species are in serious decline. In the western Atlantic, for instance, the bluefin tuna's breeding population has declined by about 90% since the mid-1970's. Marlin, killed primarily as bycatch in tuna and swordfish fisheries, are declining in both the Atlantic and Pacific. Sharks and billfish are also experiencing serious declines due to management gridlock at the regional, Federal, and international levels.

WWF recommends that the U.S. recover the authority to set its own catch quotas for highly migratory species under the Magnuson Act and the Atlantic Tunas Convention Act, provided that the quotas are no higher than those recommended by international agreement.<sup>1</sup> The current restriction on U.S. authority to set domestic quotas that are more restrictive than those recommended by ICCAT is glaringly inconsistent with other conservation laws in this country and prevents us from managing highly migratory species for the benefit of the fishery resource itself. WWF believes that the U.S. needs to take the lead in promoting strong conservation measures for highly migratory species at the international level. We must also implement new measures to encourage all countries to adhere to necessary management measures for such species, especially countries that are not parties to the ICCAT or other fishery management conventions. Further, the Magnuson Act should be amended to mandate the rapid rebuilding of overfished or depleted species like

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<sup>1</sup> This will require an amendment to the Atlantic Tunas Convention Act, 16 U.S.C. 971d(c).



bluefin tuna, swordfish and shark populations. The presence of healthy populations of large pelagic predators is vital to the marine ecosystem, and WWF urges the Congress to take decisive steps to improve the management of these species.

#### 5. Minimize Bycatch Problems

The Magnuson Act is currently ambiguous with respect to the important issue of wasteful bycatch and dead discards. The national standards put harvest efficiency ahead of the conservation of non-target species and the health of the marine ecosystem as a whole. Some fisheries are thus allowed to cause intolerable waste and serious conservation problems. Worldwide, discarded bycatch amounts to an estimated 12 to 20 billion pounds of sea life every year, or 20% of the overall catch. Perhaps the most egregious example is the Gulf of Mexico shrimp trawl fishery, where 9 to 11 pounds of juvenile fish are caught and thrown overboard (mostly dead or dying) for every pound of shrimp that is taken.

WWF would like to see bycatch specifically defined under the Magnuson Act to include more than merely those species highly valued and sought after by other fishermen. Whereas bycatch and dead discards can have an economic impact in causing declines of important species, it also must be recognized that such practices impact a variety of species whose functions and roles in marine ecosystems remain unknown. The Act should make it a national policy to minimize the negative impact

of bycatch on fish populations and the marine ecosystem. Incentives should be created within the Act to promote conservation engineering and selective gear development that reduces or eliminates bycatch. The Act should encourage collection of additional scientific data on the extent of bycatch and its impact on marine ecosystems. Finally, the Act should be amended to require fishery management plans to set maximum bycatch limits, and apply stringent penalties or close the fishery to those fishermen who exceed such limits.

#### 6. Conserving Marine Habitat

The increasing degradation and loss of marine fish habitat due to pollution, coastal development, population pressures and other human activities, may be the greatest long-term threat to the future viability of our marine fisheries. For instance, over half of our coastal wetlands, essential habitat to 75 percent of the nation's marine fisheries, have been destroyed. Direct habitat alteration through water diversions has also significantly reduced the spawning habitat of anadromous fish stocks; 80 - 100 percent of such migration routes have been eliminated in some river systems. Where adequate habitat is present, many fish species are fighting a losing battle with toxic contaminants and nutrient runoff which may lead to lowered oxygen levels in the water column.

Currently the Magnuson Act gives neither the National Marine Fisheries

Service nor the fishery management councils any measure of control over activities that adversely impact marine fish habitats. Strong habitat conservation provisions should be written into the Magnuson Act that give fishery managers increased authority and adequate means to protect the habitats of fish under their management. WWF believes that the Act should be amended to provide the National Marine Fisheries Service with authority to modify, restrict or prohibit projects or activities which will alter, degrade or destroy essential marine fish habitats.

Clearly, the issue of fish habitat protection crosses agency jurisdictional boundaries. It is our hope that the Magnuson Act reauthorization can provide a forum in which a clear national coastal habitat policy could be developed. Perhaps at least a set of habitat conservation guidelines could be included for individual states to enact. The Act should also address the problems and costs of habitat loss, and provide for an assessment of the extent to which pollutants and environmental changes such as ozone depletion threaten the viability of open-ocean habitats.

## 7. Enhancing Enforcement and Monitoring

After enactment of the Magnuson Act, observer programs were implemented in most fisheries to monitor foreign fleets. Those fleets were required to prepay for access into the U.S. EEZ and each vessel was responsible for funding its observer coverage during all fishing activities. During the Americanization of fisheries in U.S.

waters, foreign fleets were eventually fully replaced by U.S. vessels and observer coverage was no longer required in many fisheries. Currently, observer programs still exist in the North Pacific, in some New England fisheries, and for specific fisheries in other regions. Due to the current levels of fishing effort, technology, and capacity, however, additional comprehensive observer programs are badly needed to adequately fulfill the requirement for current scientific information in addition to monitoring compliance with fishing regulations.

A comprehensive observer program for U.S. fisheries would provide reliable data as well as improve compliance with fishery laws, both critical aspects of an effective fishery management program. Currently, catch data are generally supplied on a voluntary basis by fishing vessels or processors, and the information is generally inaccurate and incomplete. Similarly, because of the inherent difficulties of enforcing fishery regulations at sea with a limited number of NMFS agents, compliance with restrictions limiting the amount of fish and bycatch allowed to be caught each year is often poor.

Critical to strengthening the enforcement process is the expansion of observer coverage and NMFS enforcement staff.<sup>2</sup> Observers provide unbiased and detailed information on fishing activities as they occur. The need to expand this information

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<sup>2</sup> Currently, for example, there are no NMFS Special Agents dedicated to enforcing new restrictions on catches of highly migratory species. The agency has put on hold plans to hire a single Agent for the entire eastern seaboard.

collection system is clear, since fisheries cannot be managed effectively without managers having access to timely, accurate estimates of total catch. Similarly, management will never be effective unless there is adequate enforcement.

#### 8. Funding Conservation-Oriented Fisheries Research

Funding is lacking for research necessary to conserve and enhance our nation's fisheries and the habitat upon which they depend. Because of current funding levels, the status of more than a third of the marine fish species under federal jurisdiction is unknown. Not only is there too little research, but current information collection systems are inadequate. For example, there is little effort to research the interactions among species, which could help us better understand the dynamics of the marine ecosystem in which fish populations exist. Basic research is also needed to assess the effects of toxic chemicals, nutrient over-enrichment, pathogens, and diseases on living marine resources.

WWF believes that new, innovative sources of funding are clearly needed to support limited appropriations for all aspects of fishery management. Congress should amend the Magnuson Act to allow for collection of user fees or excise taxes on the landed value of fish to provide funds for enhancement of research, management, and enforcement for U.S. fisheries. We would also like to see the Act amended to create a Marine Fish Conservation and Management Trust Fund dedicated to the collection of

such revenue, so that fees paid would be solely devoted to fishery conservation and management.<sup>3</sup>

With these issues in mind, WWF looks forward to working with you to improve the management of marine fisheries in the United States. For too long, the conservation of fish populations has been given a back seat to other priorities, such as the development of a U.S. fishery in our EEZ and land use needs in the coastal zone. With the conditions of our oceans and their living resources deteriorating, it is clearly time to elevate concern over the conservation of marine fish populations and the health of our marine ecosystems.

Our goal at WWF is to strengthen and improve fishery management at all levels. We intend to participate actively in the reauthorization of the Magnuson Act, in oversight of the fishery management councils, and in a program to strengthen consumer involvement and interest in fishery management in the U.S. As the views of WWF and the Marine Fish Conservation Network continue to evolve, we will provide further details on our recommendations for the reauthorization of the Magnuson Act. We look forward to working with you on this and other issues related to improving the effectiveness of marine fisheries management throughout the waters of the United States.

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<sup>3</sup> Such a fund could be structured similar to the African Elephant Conservation Fund, created by the African Elephant Conservation Act of 1988, 16 U.S.C. 4212.



# NATIONAL COALITION FOR MARINE CONSERVATION

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March 4, 1993

The Honorable Thomas J. Manton  
Chairman, Subcommittee on Fisheries  
Management  
House Committee on Merchant Marine and Fisheries  
Room 1334, Longworth House Office Building  
Washington, DC 20515

MAR 5 1993

Dear Cong. Manton,

Thank you for sending us a notice of your subcommittee's March 3rd hearing for the purpose of holding initial discussions of reauthorization of the Magnuson Fishery Conservation and Management Act of 1976. Since we were unable to participate in the hearing, the National Coalition for Marine Conservation respectfully requests that this statement, urging Congress to strengthen and improve the conservation objectives of the Magnuson Act, be made a part of the record.

The Magnuson Act is the principal mechanism for promoting the conservation and management of America's living marine resources. But the Magnuson Act has failed to achieve the objectives established by Congress in the original legislation and subsequent amendments. The nation's most valuable fisheries are plagued by overfishing, over-capitalization, the widespread use of indiscriminate fishing gear and resulting bycatch problems, and the loss of wetlands and other essential habitat due to environmental pollution or alteration.

The failure to protect marine fish from overfishing and other threats, and to rebuild depleted fish populations back to healthy levels, is compelling proof that there are serious deficiencies in fisheries management under the Magnuson Act. Congress must address these problems during reauthorization, and include amendments that will make conservation the number one priority of fisheries management - not just in intent, but in practice. Only by reforming and strengthening marine fisheries management can we increase yields from restored fish populations and provide the greatest benefit to the American public.

The goal of the Magnuson Act is to conserve and manage marine fish populations at sustainable levels, in order to support healthy and productive U.S. commercial and recreational fisheries. When fish populations decline, it

decreases the supply of protein available from the sea, causes substantial losses in jobs and revenues, brings hardship to fishermen and coastal communities, disrupts traditional lifestyles, and limits recreational opportunities. Despite 16 years of management under the Act, 67 species or stocks of fish found off the U.S. coast are overfished, many severely, according to a recent Department of Commerce "Report on the Status of U.S. Living Marine Resources" (December 1992). That amounts to an astonishing 45% of the fish stocks whose status is known. Because of overfishing, finds the Commerce Department, U.S. fisheries are producing only half their potential yield, with losses of about \$3 billion a year to the nation's fishing economy.

The greatest flaw in marine fisheries management is that managers do not *prevent* overfishing and the losses necessary to reverse it, as the Magnuson Act mandates, but instead *react* to overfishing after it occurs. The reasons for this are several. Generally speaking, fishery managers bow to constituent pressures to err on the side of continued fishing. The "optimum yield" concept as loosely defined in the law permits allowable catch levels to be "modified by relevant social and economic factors." Often, the basic biological needs of the resource are allotted less consideration than the immediate financial needs of fishermen. As a result, overfishing is permitted in the name of short-term economic gain. This problem is exacerbated by the presence of individuals on the Fishery Management Councils who have or represent a financial interest in the fisheries they manage. For the same reasons, there are few effective recovery plans for depleted fisheries, hence some severely overfished populations continue to be overfished.

In addition, the tools fishery managers are given with which to monitor and regulate today's extensive, complex and highly sophisticated marine fisheries are woefully inadequate. The Act calls for managers to operate on the "best scientific information available." But the status of one-third of U.S. fish stocks is unknown. Even where general population trends are known, the data are often imprecise. This imprecision in assessing fish abundance and the impact of fishing and other human activities on fish stocks, associated species and their environment, undermines the ability of managers to respond to overfishing and population declines in a timely and effective manner.

The following actions, most requiring amendments to the Magnuson Act, are needed in order to strengthen management of marine fisheries and promote their long-term sustainability:

- **Eliminate overfishing and rebuild depleted fish populations.**

Amendments are needed to compel fishery managers to prevent overfishing and rebuild overfished populations on a priority basis. Although there may be short-term social and economic impacts associated with rebuilding depleted fisheries, over the long term restored fisheries will provide the greatest benefit to the nation, and the U.S. fishing industry will be the primary beneficiary. The Act should be amended to require that fishery management plans contain an objective and measurable definition of overfishing. When overfishing is occurring, the Act should require the appropriate Fishery Management Council to establish a recovery program featuring specific rebuilding goals and a timetable for



achieving those goals. If a Council fails to do so, the Secretary of Commerce should be required to intervene and prepare a satisfactory plan.

- **Adopt a risk-averse approach to management.** The National Marine Fisheries Service's "Strategic Plan for the Conservation and Wise Use of America's Living Marine Resources" calls for a risk-averse approach to managing fisheries. "In the face of uncertainty and pressure from the fishing industry," NMFS observes, "fishery managers have often tended to base their decisions on an optimistic view of the condition of fishery resources. These 'risk-prone' decisions eventually result in overfishing." When uncertainty exists, it must not be an excuse for poor management. The risk of overfishing should be reduced by giving the benefit of the doubt to conservation. The Act should be amended to require that managers provide a margin of safety when setting allowable catch levels, to act as a buffer against overfishing. Additionally, the burden of proof to demonstrate that damage will not occur (from the introduction of new gear for instance) should be on those who would exploit fish, not on those charged by law with conserving them.

- **Reduce conflicts of interest on fishery management councils.** When Congress created the Fishery Management Council system, it wanted those persons active in the fisheries to be a part of the decision-making process so management would benefit from their knowledge and experience. This is both a major strength and weakness of the Act. While management benefits substantially from the advice of active fishermen, Council members who have a financial interest in the fisheries they manage represent a classic conflict of interest. Because of it, Councils have frequently failed to act to stop overfishing. The law should be amended to prohibit Council members from voting on matters relating to a fishery in which they have a direct or indirect financial interest. In addition, the Secretary should be directed to appoint more individuals to the Councils who are unaffiliated with any user group, thereby ensuring fair representation of the broad public interest in marine fisheries.

- **Improve conservation of highly migratory species.** Swordfish, tunas, billfish and pelagic sharks (the so-called "highly migratory species") are overfished and have experienced continued or increasing declines despite national and international management programs. Until 1990, tuna fisheries, along with their substantial bycatch of billfish and sharks, were unregulated under the Magnuson Act. That year, Congress included tuna under the Act and transferred responsibility for all highly migratory species in the Atlantic Ocean from the Councils to the Secretary of Commerce. The Secretary, however, is prohibited from enacting measures that are more conservative than those recommended by the International Commission for the Conservation of Atlantic Tunas, a body that throughout its 25-year history has failed to keep catches at sustainable levels or to stem ongoing declines. International cooperation to enhance the conservation of large pelagic fishes throughout their migratory range is essential. The U.S. must more aggressively pursue the objectives of the Magnuson Act through ICCAT and other international bodies. Congress should amend the Atlantic Tunas Convention Act (ATCA) to appoint the administrator of NMFS (or his/her designee) as head of the U.S. delegation to ICCAT. Moreover,

the Magnuson Act and the ATCA should be amended to remove any and all constraints on U.S. authority to act unilaterally when more conservative measures are in the best interests of American fishermen and the health of the resources they depend on.

- **Minimize bycatch problems.** The use of non-selective fishing gear - essentially, any type of gear that catches large amounts of unintended fish and other marine species (e.g., large scale drift nets and small-mesh bottom trawls) - causes intolerable waste and serious conservation problems. Billions of pounds of fish and other sea life are discarded dead each year. The Magnuson Act is largely silent on the subject of bycatch and discards. The Act should be amended to include a definition of undesirable bycatch and mandate research on bycatch and its effect in each fishery. All fishery management plans should be required to include provisions to assess and reduce the harmful effects of the incidental capture of fish and other marine animals.

- **Protect marine habitats.** The continuing loss and degradation of fish habitat - to pollution, development, population pressures and other human activities in the coastal zone - could become the greatest long-term threat to the future viability of marine fisheries. Damage to estuaries, wetlands, and other critical habitats are leading factors in the decline of many shore-dependent and anadromous species. The Magnuson Act should be amended to give the National Marine Fisheries Service, after consultation with the appropriate Council(s), the authority to modify, restrict or prohibit projects or activities which alter, degrade or destroy essential habitats of fish managed under the Act.

We believe conservation and management of marine fisheries can be significantly improved without the appropriation of one more dollar by Congress, by the implementation of these and other improvements and, most importantly, the strong and active political backing of Congress and the Administration for both the objectives of the Magnuson Act and the fishery managers responsible for implementing and enforcing the law.

Having said that, it must be noted that the National Marine Fisheries Service is among the most chronically underfunded agencies in the federal government, and the effect of that fiscal neglect is pronounced in many critical programs. Congress should implement the budget recommendations of the National Fish and Wildlife Foundation in its "Fisheries and Wildlife Assessment for the National Marine Fisheries Service" to enhance fisheries research, data collection/monitoring, enforcement and habitat conservation. Worthy of special note are the need for new or increased funding for the Fishery Management Councils, the NMFS Office of Habitat Protection, and the Highly Migratory Species Management Division. Finally, Congress should consider amending the law to allow managers to assess user fees to recover the costs of research, management and enforcement.

In conclusion, too many of the nation's important commercial and recreational fisheries are depleted or in decline. Even as more species are added to the overfished list every year, efforts to restore depleted fish populations are

slow and ineffective. The price we are paying is one we cannot afford. In New England alone, the annual cost of overfishing groundfish is estimated at \$350 million (in jobs and revenues), nearly twice what is spent to operate NMFS. Congress must take advantage of the opportunity offered by reauthorization and strengthen the Magnuson Act to protect, restore and conserve America's marine fisheries. Commercial and recreational industries, jobs, lifestyles, quality of life and the quality of our environment are at stake.

Thank you again for this opportunity to share our views with the subcommittee, and we look forward to working with you in the coming months to produce a strong, conservation-oriented program for conserving America's fisheries.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Hinman". The signature is fluid and cursive, with the first name "Ken" and last name "Hinman" clearly distinguishable.

Ken Hinman  
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE  
Office of Inspector General  
Washington, D.C. 20230

April 23, 1993

The Honorable Don Young  
Ranking Minority Member  
Subcommittee on Fisheries Management  
Committee on Merchant Marine & Fisheries  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Young:

In response to your recent request, enclosed is a copy of this office's findings on our criminal investigation of allegations about conflicts of interest by the North Pacific Fishery Management Council.

Please be advised that this document is being provided to your subcommittee as a routine, intra-governmental transfer of information outside of the provisions of the Freedom of Information and Privacy Acts. Its release to you and the subcommittee staff is not deemed to be a public release. If you wish to disseminate the report further, please inform us in advance.

If you have any questions, please call Wayne Weaver, Counsel to the Inspector General, 482-5992. Thank you for your interest in our work.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Zimmerman".

Michael Zimmerman  
Deputy Inspector General

Enclosure

cc: The Honorable Thomas Manton ✓

SUMMARY OF CONFLICT OF INTEREST MATTERS  
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL  
OIG INVESTIGATION 92DN5-3766

INTRODUCTION

North Pacific Fishery Management Council  
Inshore/Offshore Preference Issue

The North Pacific Fishery Management Council (NPFMC or the Council) is one of eight regional councils established by the Magnuson Act, 16 U.S.C. §§ 1801-1882 (1988), to make recommendations on the nation's fishery resources. We initiated an investigation upon the receipt of allegations that certain voting and staff members of the NPFMC violated conflict of interest laws and regulations.

The allegations revolved around the inshore/offshore preference issue (I/O) before the Council. This issue involved a proposal by the NPFMC to amend the Bering Sea/Gulf of Alaska Groundfish Plans by allocating pollock and Pacific cod between inshore and offshore processing interests. The amendment was controversial because it would transfer a large portion of the total allowable catch from at-sea processors (mainly based in Washington State) to shoreside processors in Alaska. We briefed the committee on this issue in greater detail earlier this year when we issued our audit report on the NPFMC.

FINDINGS

I. Investigation of Voting Council Members

By a 9 to 2 vote, the NPFMC decided at its June 1991 meeting to allocate the total groundfish catch (chiefly pollock and Pacific cod) between inshore and offshore interests. This decision favored inshore interests, increasing their share of the groundfish catch in the Gulf of Alaska. We examined allegations that two Council members personally benefitted when they voted on the I/O issue. The NPFMC defined "inshore" facilities to include all commercial fishing vessels of less than 125 feet in length, leaving longer vessels in the "offshore" category. It was alleged that the Council members voted in favor of this measure, which was tailor-made for vessels they owned.

We found that both Council members owned fishing vessels that came within the Council's "inshore" definition. One member also owned an interest in a fish processing business that would be affected by the groundfish allocation amendment. Both Council members voted in favor of the groundfish amendment. However, they disclosed their financial ownership in the vessels and business at issue in financial disclosure statements they filed

with the NPFMC. One Council member also reminded the Council that he owned interests in affected vessels during the deliberations on the I/O issue.

The National Marine Fisheries Service (NMFS) maintains records on vessels of 125 feet in length or less that are engaged in the groundfish business. The 1991 list encompasses 95 vessels, including all the vessels owned and declared by both Council members. The NMFS list did not contain any other vessels owned by the Council members.

### Conclusion

The Council members voted on a matter before the NPFMC in which they had financial interests. However, because they disclosed their interests in the fishing vessels and business affected by the Council's decision, they are exempt from the conflict of interest provisions of 18 U.S.C. § 208 and 50 C.F.R. § 601.35(b)(8)(ii). They did not violate 50 C.F.R. § 601.35(b)(8)(i) by voting on the 125 foot "inshore" definition because this issue affected a large class of vessel owners, and is therefore not a "particular matter primarily of individual concern."

### II. Investigation of Former Council Employee

A former Council staff employee who worked on the I/O issue left the Council to work for a consulting firm in Alaska, where he was alleged to have worked on the I/O matter and been given special access to Council staff.

We found that a number of NPFMC staff employees left NPFMC for employment with an Alaska wildlife consulting firm. A trade association that represents inshore processing interests in Alaska retained the consulting firm to analyze the NPFMC's environmental impact study (EIS) on the I/O issue when it became available for public review and comment. The EIS was designed to evaluate the Council's recommendations on the groundfish industry.

The Council staff employee we investigated worked at the Council on the initial database the Council used to evaluate the I/O issue. He resigned from his Council staff position but remained on NPFMC's payroll for three more months by expending his accrued annual leave and compensatory time. He began working for the consulting firm the day after officially leaving the Council.

This former employee analyzed the EIS for the consulting firm's contract with the trade association. He told us that he attended public Council meetings and occasionally asked NPFMC staff

questions about the EIS. He denied that he was given preferential treatment or obtained any non-public information from any Council employee.

An executive of the NPFMC and other Council staff reported that the former employee was not present at any non-public staff meetings at which the I/O issue was discussed, and that he was not granted access to any non-public or proprietary information on the I/O issue. They also said the employee did not attempt to influence their work on the I/O issue.

In 1991 the consulting firm provided consulting services on contracts totaling millions of dollars. The fee for the work for the trade association was about 6.5% of the consulting firm's billings for 1991. The trade association was one of over 40 active clients of the consulting firm for that year.

### Conclusion

The former Council employee worked on the I/O issue first as a member of the Council staff and then for a consulting company. He did not violate 18 U.S.C. § 207 by working for the consulting company because the I/O issue was not a particular matter involving specific parties. Further, we did not substantiate that he represented the consulting firm in an attempt to influence the Council on a matter in which he participated while working for the Council. We did not uncover evidence that the former employee sought or received confidential or privileged information from the NPFMC.

### III. Investigation of Former Council Employee

A former employee of the NPFMC played a major role in analyzing the I/O issue and drafting recommendations for the Council. We received an allegation that he resigned from the Council to work for a consulting firm, where he developed business from the Council and a trade association that would be affected by the Council's decision on the I/O issue. The employee did not leave his Council position, however, until after the Council vote on the I/O issue, a half year after announcing his resignation.

This former employee accepted a position with a consulting firm composed in large part of former NPFMC employees. He advised the Council that he would be leaving but volunteered to remain at NPFMC until the I/O issue came up for final action. The Council and the consulting firm agreed that the employee would stay at NPFMC until after the Council's vote. The employee's departure was announced in the NPFMC newsletter.

The former employee began work at the consulting firm after the Council vote on the I/O issue. However, he remained on NPFMC's payroll for a few more months, when his annual leave was exhausted. We confirmed that his consulting work did not entail work on a contract with a trade association that would be affected by the Council's decision on the I/O issue.

Before his departure from the Council, the employee requested advice on working for the consulting firm. A lawyer for the Commerce Department provided an opinion stating that the post employment restrictions of 18 U.S.C. § 207 do not prohibit the employee from working for a consulting firm that provides analytical services or from making a presentation to the Council. The basis for this position is that § 207 prohibits only representational activities, and to the extent that the employee only consults for the firm, he does not provide representational services. Further, the employee may present his analysis to the Council because the fishery management plan he worked on at the Council is a matter of general policy, not a particular matter involving specific parties.

### Conclusion

The former employee we investigated worked on the I/O issue at the Council and subsequently accepted employment with a consulting firm, where it appears he did not work on the I/O issue. Even if he worked on the I/O issue for the firm, that would not constitute a violation of 18 U.S.C. § 207 for the reasons cited in the legal opinion.

While the former employee may not have run afoul of 18 U.S.C. § 207 he may be culpable under other laws. Though we are not certain about the nature of his work at the consulting firm, we know that after he accepted employment with the firm, he worked on the I/O issue at the Council. He may have violated 18 U.S.C. § 208, depending on whether the Council's decision on the I/O had an effect on the firm. Under § 208 any such effect must be direct and predictable. Here, the effect of the Council's decision on the consulting firm's clients would be direct, but the effect on the firm is not clear. Surely it was foreseeable that the firm could be affected by it; the firm was consulting on fisheries matters at the time. At a minimum, the employee's actions clearly conflicted with the fair and impartial conduct of his Council duties, thus violating 50 C.F.R. § 601.35(b)(4).

### IV. Investigation of Voting Member of NPFMC

We investigated whether and when a voting Council member had financial interests in companies that stood to benefit from the Council's decision on the I/O issue. We also sought to determine



how expenses for a lobbying trip to Washington he took were paid for.

We found that this voting Council member owns a fisheries consulting business. His business entered into a consulting contract with a consortium of inshore seafood processors that would be affected by the Council's decisions on the I/O issue. The Council member told us that he did not discuss his contract with the consortium until a few months after the vote on the I/O issue. The documents we reviewed showed that the members of the consortium paid him his fee within a two month period after the completion of the Council's work on the I/O issue. One payment was made before the contract was signed.

The contract called for analysis in a different industry than that affected by the I/O decision. The Council member produced a report, but at the present time, we are unable to estimate its value or the time expended in producing it.

The Council member said that he traveled to Washington, D.C. after the Council's vote to discuss the I/O issue with members of the U.S. Senate. He said he paid for the trip with his own money and did not charge the NPFMC for expenses.

The members of the seafood processing consortium made individual payments to his consulting business just before the trip to Washington. However, we did not find payments to the Council member or his business from the consortium that matched the amounts of the trip, i.e., we did not substantiate that any payments to his business were for the lobbying trip. The consortium did pay him separately for expenses for another trip he made in connection with their contract. NPFMC documents do not reflect payment to the Council member for the trip.

The Council regulations require Council members to update their financial disclosure forms "at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed." The Council member disclosed his contract with the consortium about a month after it was signed. He said he thought he was allowed a 30 day grace period to report new financial interests.

### Conclusion

The Council member participated in the I/O issue as a member of the Council and entered into a contract with a consortium of companies that would benefit from the implementation of the Council's recommendations. We did not develop information that the Council member performed any work for the Council on the I/O issue during the period after entering into contract negotiations with the consortium and before disclosing his financial interest.

Thus, we did not establish any violation of 18 U.S.C. § 208 or 50 C.F.R. § 601.35(b)(8)(ii).

One payment by a member of the consortium is troubling. The contract was not entered into until approximately three weeks later, and precontractual payments are unusual. However, we do not have information that the payment was made for a purpose other than the consulting work, as indicated by the company. Therefore, we have no basis for alleging any violation of 18 U.S.C. §§ 201 or 209.

The Council member traveled to Washington to discuss his views on the I/O issue with U.S. senators. We determined that the NPFMC did not authorize or pay for the trip. Further, we did not substantiate that the consortium paid him for lobbying services. The law does not prohibit any appearance of a conflict of interest that might arise from the Council member's lobbying senators at a time when he has a financial interest in a group of companies that would benefit from his efforts.

#### REFERRAL TO U.S. ATTORNEY'S OFFICE

The results of this investigation were referred to the Criminal Division of the U.S. Attorney's Office, Anchorage, Alaska. Prosecution was declined on all subjects we investigated.

We also provided a copy of our report to the Office of Government Ethics.

LEGAL BACKGROUND AND RECOMMENDATIONS

Although we uncovered abuses, our investigation did not substantiate any violations of criminal laws. We found that conduct that is forbidden under criminal conflict of interest laws in other contexts is permitted under the laws establishing the NPFMC and the other regional councils. The legal framework governing NPFMC operations makes this possible: it anticipates and, we think, invites, conflicts of interest but exempts the Council's voting members and Executive Director from some of the most important laws.

Regulations promulgated under the Magnuson Act require that Council members be knowledgeable and experienced in one or more specified areas, including harvesting, processing, or marketing fish. Required experience may also involve holding office in or leading a State, regional, or national organization representing any of these interests. 50 C.F.R. § 601.33.

The regulations, at 50 C.F.R. § 601.35, make clear that Council employees are subject to most federal conflict of interest laws, including 18 U.S.C. § 208 (actions affecting personal financial interests) and § 207 (post employment conflicts). However, the Magnuson Act, 16 U.S.C. § 1852(k)(7), and regulations, 50 C.F.R. § 601.37(b), exempt the voting members of the Council and its Executive Director from 18 U.S.C. § 208 if they disclose financial interests they hold that may come within the jurisdiction of the Council.

The regulations, at 50 C.F.R. § 601.35(b)(4), prohibit Council employees from maintaining financial interests that conflict with their duties. Also, under 50 C.F.R. § 601.35(b)(8), Council members are prohibited from participating in (i) particular matters primarily of individual concern in which they have a financial interest, and (ii) matters of general public concern that are likely to have a direct and predictable effect on their financial interests, unless those interests are properly disclosed.

**GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

Lincoln Center, Suite 331 • 5401 W. Kennedy Blvd.  
Tampa, Florida 33609-2486 • 813/228-2815 • Fax 813/225-7015

JULY 93 11 45 18

May 27, 1993

The Honorable Thomas J. Manton  
Chairman  
Subcommittee on Fisheries Management  
Merchant Marine and Fisheries Committee  
Room 1334, Longworth House Office Building  
Washington, D.C. 20515-6230

Dear Representative Manton:

As indicated in my testimony before your subcommittee we are hereby submitting our recommendations for amendments to the Magnuson Act.

**SECTION 302(j) PROCEDURAL MATTERS**

**Recommendation (1):** Provide a new subsection that includes the substance of other applicable law, such as NEPA, Paperwork Reduction Act, Regulatory Flexibility Act, Endangered Species Act, Executive Order 12291, etc., be included in the Magnuson Act.

**Rationale:** The Council requests, to the extent legally permissible, that applicable provisions of this other law be included in the Magnuson Act to streamline the review and approval process and eliminate unnecessary duplication. The Act currently requires examination of impacts of regulatory actions on the user groups. The impact analysis requirements could be broadened to include analyses of other impacts required by this other applicable law. In making this request we are not requesting to be exempted from the provisions of any of the other applicable law. The Council feels strongly that the impact analyses required by each of these laws is very important to both the Council and persons affected in assessing impacts of proposed measures. Since the time periods for public review under other law, especially for NEPA, differ from that of the Magnuson Act, we feel that by incorporating the impact analyses requirements into the Act, the review process could be improved.

**Recommendation (2):** Include NMFS as an entity for which FACA would not apply for advisory committees or panels needed for international management of migratory species.

**Rationale:** The Council feels that NMFS should not be constrained from forming industry and fishermen advisory panels to provide advice on management of these species. If Congress does not return management of east coast highly migratory species and oceanic sharks to the Councils then this exemption should apply to APs for domestic management as well, e.g. for east coast sharks.

Thomes J. Manton  
May 26, 1993  
Page Two

#### SECTION 304(a) ACTIONS BY THE SECRETARY AFTER RECEIPT OF PLAN

Recommendation: Amend subsection (1) to require that regulatory amendments developed under FMP framework procedures be subject to the same review, approval and implementation schedule as FMPs and FMP amendments.

Rationale: Over the years, NMFS encouraged the councils to include framework measures in FMPs to expedite implementation of annual seasonal adjustments, such as TAC, quotas, and bag limits, through regulatory amendments. Generally, when first initiated this process required two to three months. Currently the regulatory amendments are not subject to any statutory time limit for action by NMFS and other federal agencies. Therefore, they are assigned a secondary status in the review and approval process and in recent years implementation frequently requires a longer period than plan amendments.

#### SECTION 304(d) ESTABLISHMENT OF FEES

Recommendation: Establish a dedicated trust fund for fees collected for use by NMFS for administration of management.

Rationale: Fees collected for permits should be available for NMFS to support the permitting programs and other administrative functions of NMFS. Currently, such fees revert to the U.S. Treasury. NMFS currently lacks the fiscal resources to process permits in excess of the current level. This seriously limits the regulatory options of the councils in the Southeast, such as implementing limited access systems or permitting dealers. Most vessels operating in the Gulf do not have vessel permits.

#### SECTION 304(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL

Recommendation: Return management of highly migratory species back to the appropriate Council or Councils and provide an appropriate voting mechanism.

Rationale: The Council system maximizes public involvement in the decision process through hearings, advisory panels, testimony before the Councils, etc. The Council noted for the system to be effective that the current requirement for approval by the majority of each Council under subsection (1)(B) must be amended, but elected not to provide a recommendation on this change. Without such a change the impasse that prevented approval of the billfish FMP for ten years would exist. The Council also considered the impact of subsection (3)(E) which provides that for highly migratory species managed under international treaty, U.S. vessels shall be given a reasonable opportunity to harvest such allocation or quota, i.e., domestic regulation should not be so restrictive as to prohibit this opportunity. The Council had no objection to this provision being retained under Council management of highly migratory species.

Thomas J. Manton  
May 25, 1993  
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#### SECTION 305(C) EMERGENCY ACTIONS

**Recommendation (1):** Amend subsection (3)(B) to allow the rule to remain in effect for 180 days (instead of 90 days) and to be extended for not more than 180 days (instead of 90 days) after public hearings on the extension.

**Rationale:** The Council concurred with NMFS that the current emergency rule period is inadequate to implement permanent rules to address an emergency situation through the plan amendment process. However, the Council felt that neither the Secretary or Councils should extend the rule for a full year without hearing public comment on the issue.

**Recommendation (2):** Amend the section to allow promulgation of emergency rules for public health, with such rule remaining in effect until FDA withdraws the rule.

**Rationale:** Such rules would be implemented only for conditions that jeopardize public health, such as those resulting from toxic wastes.

#### SECTION 306 STATE JURISDICTION

**Recommendation:** Amend the section to specifically establish and/or clarify the authority of the states to manage species harvested in the EEZ that occur in both the state territorial waters and the EEZ in the absence of a FMP, and also amend the section to enable a state, with the concurrence of the appropriate council to establish landing laws or regulations for species landed from the EEZ as well as state waters.

**Rationale:** The Council in attempting to minimize federal regulation of species of stocks shared with the states have used state rules for allocation by vessel trip limit of a subquota and regulation of other minor fisheries (e.g. live rock) entirely by the affected state through landing laws on state registered vessels. These state rules have been challenged in federal court, with a lower court ruling invalidating one and pending, on the second. An initial court of appeals brief returning it to the lower court suggested all fish in the EEZ should be managed under the Magnuson Act. This would create a serious problem, if subsequently upheld by a higher court, and overtax the ability of the Council system to provide EEZ management for all species not managed under FMPs.

#### SECTION 307 PROHIBITED ACTS

**Recommendation:** Extend protection against criminal offenses (e.g. forcible assault, etc.) to all federal data collectors including those under contract or grant.

**Rationale:** This would make it a federal criminal offense to forcibly assault, intimidate or interfere with NMFS data collectors, including persons collecting data for NMFS under contract or through cooperative agreement with the states.

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May 25, 1993  
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SECTION 308(b) REVIEW OF CIVIL PENALTY

Recommendation: Amend to provide the opportunity for persons, against whom permit sanctions are exercised, to seek judicial review of the sanction.

Rationale: Currently under the Act persons may seek judicial review in federal courts of civil or criminal penalties assessed against them under the Act, but not for permit sanctions which may be a more severe penalty.

We appreciate this opportunity to provide our recommendations for your consideration.

Sincerely,



Philip D. Horn  
Chairman



PDH:WES:ccm

WES:ccm

c: Gulf Council  
Staff



## Center for Marine Conservation

### Testimony of the Marine Fish Conservation Network

Before the  
Subcommittee on Fisheries  
of the House Merchant Marine and Fisheries Committee

April 21, 1993

Good morning Mr. Chairman and Members of the Committee. My name is Suzanne Iudicello, and I am program counsel for the Center for Marine Conservation. I am appearing today on behalf of the Marine Fish Conservation Network. The Network's membership includes nearly two dozen conservation, sport and commercial fishing groups, who have come together around several common themes, and out of concern for the health and abundance of America's fisheries.

The themes are set out in "A National Agenda for Conserving America's Marine Fisheries," which has been provided to Members and staff. We respectfully request that it be made part of the record of this hearing. As a member of the Network's Steering Committee, which also includes the World Wildlife Fund, the National Coalition for Marine Conservation, the National Audubon Society, and Greenpeace, the Center for Marine Conservation appreciates your invitation, Mr. Manton, to participate in today's hearing.

Unlike the witnesses you heard at your first oversight hearing on reauthorization of the Magnuson Fishery Conservation and Management Act ("Magnuson Act" or FCMA) a month ago, we are not going to tell you today that all is well. From our perspective, the "C" for





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"conservation" in the FCMA has been overwhelmed by the Act's fishery development goals for the past 15 years. Conservation has gone begging because the language of the law doesn't require it, and therefore implementation of the law ignores it. It was in response to this gap that the Network adopted its eight-point Agenda to:

- eliminate overfishing and rebuild depleted populations;
- relate the precautionary principle to marine fish;
- address conflicts of interest on the Regional Fishery Management Councils;
- improve the management of highly migratory species;
- minimize bycatch problems;
- conserve fish habitat;
- enhance enforcement and monitoring; and
- seek fiscal support for conservation-oriented fisheries research.

#### What Happened to the "C" in the FCMA?

You have heard repeatedly from us and others about the value of America's fish to coastal communities and the economy. You've heard that many of the most important species are at historic low levels. You've heard about the opportunities and income lost because more than half of our commercially valuable fish populations are either fished to their maximum potential or have been "overfished." You've heard about how much value is discarded because of bycatch. You've heard that we use more, bigger, and technologically superior effort to catch fewer and fewer fish. We've all heard these facts repeated for several

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years, yet they don't seem to have the desired effect on the decision-makers who could make a change. Indeed, there are decision-makers who can't even agree that we should prohibit "overfishing."

Since we all appear numb to the numbers, let us pose the problems in a different way that we hope will illustrate why the conservation community believes the Magnuson Act is due for overhaul:

--After nearly two decades under the Act there are no fishery management plans (FMPs) for many species of commercially important fish.

--Even where plans exist for depleted populations, they don't contain rebuilding targets or timetables.

--While run after run of salmon gets closer to the endangered species list, there is still no authority for the National Marine Fisheries Service (NMFS) to protect fish habitat.

--We have no national policy on bycatch. Indeed, Congress prohibited the Gulf Council from acting to reduce bycatch in the Gulf shrimp fishery, where 10 pounds of finfish are killed and discarded for every pound of shrimp landed. Now the region's industry wants at least another three years to study the problem.

--Despite Congressional action to ban roe-stripping, part of the Alaskan fleet has figured out that they can strip and process the roe from female pollock on one vessel, transfer the carcasses to another vessel tied alongside, and "lose" the carcasses.

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--We have no national policy that requires testing and certification of new gear to determine its effects on the target fish, let alone the marine environment. This means, for example, approval of new experimental fisheries on depleted groundfish and their spawning areas proceed through the system with alacrity, while attempts to control potentially harmful gear are stalled.

--We have tied our own hands with regard to highly migratory species, and prevent U.S. fishery managers from taking action to conserve depleted populations such as bluefin tuna and swordfish because we are stuck with the lowest common denominator found in international agreements.

--Finally, we ask, why is it that every Council representative who testified before this Subcommittee last month told Congresswoman Cantwell that they did not want any requirement in the Magnuson Act that they promulgate conflict of interest rules to govern their actions?

Mr. Chairman, these are just a few examples. We can find more and from every part of the coast: in agency decisions, council decisions, fishing behavior, conservation is not readily apparent as a goal--or even a secondary consideration. Rather, developing our own fisheries has been the driving force behind management practices.

Landings at U.S. ports were worth a record \$3.9 billion in 1991, and have increased by substantially each year for the past several years. This growth has been encouraged by

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federal policies that provide the commercial fishing industry with decision-making authority, development loans, research and marketing grants, tax exemptions, and preferential legal treatment that would make the oil, mining, or timber industries envious if they stopped to contemplate the situation.

While some sectors of the fishing industry has enjoyed the short term benefits of this growth, some have suffered the strain of increased competition in the short term. We will all pay the long term costs. You have heard about some of those costs: overfishing, overcapitalization, bycatch, and waste. The depletion of our fisheries drives up prices, threatens a major source of food, weakens an industry, wipes out a crucial revenue base, and adds to the rapidly growing list of imperiled species. Ultimately, the loss of fish stocks could have a devastating impact on the balance and diversity of entire marine ecosystems. Though they are less obvious than decreases in catch, potentially more serious are shifts in species composition within and among fish populations, as well as the unforeseen effects of changing species interrelationships by fishing pressure. We have just begun to examine the effects of fishing on species that serve as prey for other commercially and ecologically important marine fish, birds, and mammals.

But rather than detail more of what is wrong with fisheries in the U.S., we would like to examine why we find ourselves in this predicament, and how we, as conservationists, think our public resources and their public trustees, can get out of this fix. In our view, there are

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three reasons we have lost the "C" in the FCMA: (1) the Magnuson Act itself does not encourage conservation; (2) weak administration of the law compounds the problem, and (3) the absence of any constituency for conservation allows the situation to continue.

Conservation is Missing From the Language and Implementation of the Law.

After years of debate, Congress in 1976 passed the Fishery Conservation and Management Act (FCMA or "Magnuson Act") in response to U.S. concerns that foreign fleets were exploiting America's fishery resources, and that international agreements were not conserving fish stocks sought by U.S. fishermen. While one objective of the Act--the "Americanization of U.S. fisheries"--has certainly been achieved, the other stated purpose of the Act--to prevent overfishing while achieving the optimum yield from each fishery--remains elusive.

**1. The Magnuson Act Does Not Encourage Conservation**

Although the Act itself declares a policy of conservation and constructs a framework within which conservation-based decisions could and should be made, it may contain the very instruments of its own defeat. Certainly in application and practice, the FCMA has done little more than substitute foreign overfishing with domestic overfishing.

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Despite its lofty goals, and the apparent soundness of the seven national standards, the very language of the Magnuson Act creates ambiguities that have encouraged overfishing and discouraged conservation.

- o **Economic Bias** -- Elements of the industry have used the language of the national standards to successfully argue that consideration of economics and fishing efficiency outweigh conservation concerns. Where controlling or limiting fishing activity affects "efficiency," they argue, optimum yield to the fisher must take precedence over conservation concerns. The Act does not clearly demand that FMPs favor long-term benefits to the nation over short-term profit taking by individual fishers.
- o **Overfishing** -- Although the 602 Guidelines define overfishing, and the national standards require that it be prevented, neither the law nor the guidelines expressly binds the councils or the NMFS to halt the practice. Imprecise language with respect to overfishing and optimum yield has allowed overfishing to persist in the name of economic efficiency.
- o **Bycatch** -- The waste of America's marine resources through the practice of discarding bycatch (incidental capture of juvenile finfish, undersized shellfish, unmarketable finfish, invertebrates, and protected species such as birds and

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mammals) is not expressly prohibited or even mentioned in the Magnuson Act. Bycatch has been treated as a cost of doing business, and to date has been addressed only where the discard of one fishery is the desired target species of a different gear group. The only other bycatch issues that have earned attention are incidental captures of protected species such as endangered sea turtles or depleted marine mammals.

- o **Council System** -- The first three problems are exacerbated by the make-up of the eight regional fishery management councils, which are dominated by the very industry that benefits from the allocation of the public resources they are charged to conserve. The councils make both conservation and allocation decisions. They are charged with deciding both how to conserve the resource, and who gets to catch the part that's not conserved. Council members are thus pressured by fishermen for a piece of the pie, at the same time they are supposed to determine the size of the pie.
- o **Public Participation** -- Even though the Magnuson Act specifically mentions that environmental interests are to be part of the community that helps devise a fishery management plan, it does not require such representation. When the General Accounting Office evaluated the Act's implementation in 1979, it concluded that one of the major problems was the limited amount of public involvement in the process. Instead, the Councils continue to be dominated by

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fishing industry representatives who lack the scientific knowledge and are generally more inclined to act out of their own short-term economic self-interest than out of the long-term interest of fish populations, fishermen, or the ecosystem. The National Fish and Wildlife Foundation describes the system simply: "the foxes have been appointed to guard the henhouse."

## 2. Weak Administration of the FCMA Compounds the Problem

Without conflict of interest rules for the councils, and without public oversight, there is no backstop to economic self-interest. Weak administration of the FCMA compounds the problem through unclear federal authority, inattention to oversight, inadequate funding support, and neglect in meeting the requirements of the National Environmental Policy Act (NEPA).

- o **Unclear Federal Authority** – Although the Secretary of Commerce is legally responsible for stewardship of the national marine fishery resources, leadership has been missing in practice. Despite repeated calls over the years for Secretarial responsibility (most recently in the debate over the 1990 Fishery Conservation Amendments), authority continues to be diluted along the path from council decision to NMFS recommendation, to NOAA approval, and ultimately Secretarial certification. Regional special interests appear to gain



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inversely proportional power and influence the higher they go in the system.

Intense political lobbying at the highest levels, even to the White House, indicates a significant departure from the scientific deliberations that are supposed to inform the decision-making process.

- o **Inattention to Oversight --** The Secretary of Commerce is the official ultimately responsible for taking the lead in the formulation and execution of a national program to halt overfishing and restore fishery resources of the United States. Regulatory oversight of fisheries in particular, and interest in NOAA and NMFS in general, have been markedly absent from philosophy and practice in the Department of Commerce. In the absence of agency interest or diligence, increased involvement by Congress and extreme pressures on the management agency by the powerful economic interests it is supposed to regulate, have fostered the single-species approach and led to the present situation of serious domestic overfishing.
- o **Inadequate Funding --** Cuts in marine fishery enforcement, monitoring, and population assessments have undermined NMFS' ability to meet its statutory obligations under the FCMA, not to mention the Marine Mammal Protection Act and the Endangered Species Act. Last year's budget request for the NMFS was the first in years that represented an increase for the agency. But the

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President's budget for FY 94 does not look good for fish conservation. Just a few highlights: after a four-year wait on a shark plan, attributed at least in part to inadequate scientific data, the funding for shark research at Mote Marine Lab has been pulled from the budget, nor is there funding requested for highly migratory species management and research, even though the 1990 Amendments put this responsibility with the Secretary.

- o **Neglect of Environmental Impacts** -- The National Environmental Policy Act, the Magnuson Act, and NMFS' own regulations require that FMP's be accompanied by an Environmental Impact Statement (EIS). Allowable catch levels set in most current FMP's are based in many cases on EIS's or Environmental Assessments that are 5 to 10 years out of date. Without thorough consideration of the variety of alternatives and impacts that result from a decision to establish catch levels, fishery managers continue to operate in the closed universe of single-species management, without regard to the effects of their decisions on interrelated ocean resources.

Why has the federal agency entrusted with stewardship of our valuable fishery resources not been held to a higher standard of performance? Although ambiguities in the law, lack of fiscal resources, and lack of program priority within the Department of

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Commerce agenda can be cited, contributing to the problem has been the absence of a vocal, non-user constituency for conservation.

### 3. Without a Constituent Voice for Conservation, the Story Continues

The principal constituency for fisheries has traditionally come from the industry itself. Most of the debate has focused on allocation issues. Where conservation groups became involved, they focused on instances where fishing operations created conflicts with protected species, such as sea turtles or marine mammals.

The lack of a visible and effective constituency for fish conservation, coupled with the inattention of the responsible government agencies, has created a stewardship vacuum, where ecological ignorance and economic self-interests prevail.

A realignment of interests is necessary to put conservation back into the Fishery Conservation and Management Act.

Along with our colleagues, we want to tell you today that the conservation community is intent on not allowing this stewardship vacuum to continue. You will see us not only at Congressional hearings, but at council meetings, advisory committees, workshops and symposia. We intend not only to continue to inform ourselves and others of the issues, but to work to make a difference. As you know, we have formed the Marine Fish Conservation

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Network, a group created not only to bring traditional environmental groups into fish conservation issues, but also to provide a forum and voice for fishers who are concerned about conservation.

Fisheries management is, in the Congress, principally a matter of constituent casework. Outside the committees of jurisdiction the decline of our nation's fisheries is neither on the national agenda, nor until now a matter of widespread public concern. Our objective is to elevate the debate; to make fisheries management a matter of significant, national proportions--as important to the public and Congress as management of other public resources such as our country's national forests. We aim to bring in the voices of conservationists, consumers and other concerned citizens who want to see their public resources managed wisely. Until the public understands both the value of our fisheries--not just the \$50 billion dollars they generate annually for the economy, but that they belong to people in Des Moines and Kansas City as much as they do to people in Gloucester or Kodiak, neither the management agencies, the Congress, the industry, nor the conservation community will find the will necessary to insist upon the stewardship this valuable public trust deserves.

#### Conclusion

In summary, our perspective on reauthorization is that while sound, the FCMA needs reform. In our view, there has yet to be a recognition that problems such as overfishing,

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bycatch, and council conflict of interest are symptoms of the larger problem: a fishery management system that is still in the development mode when it's time to be in the precautionary mode. Before we can put the "C" back into the MFCMA, we must recognize that the era of "Americanizing the Fisheries" is over. We succeeded. Our new challenge is to conserve fisheries for Americans and fish for the future.

We recognize that the reauthorization promises to be a lengthy and complicated task. We therefore commend you for scheduling this timely hearing, and thank you for the opportunity to participate. We pledge our assistance in examining the issues further and providing the details for our proposals. While we do not expect that each of the Network's agenda items will be met with enthusiasm, we have been gratified by how much common ground we share with those segments of the industry with whom we've met to share our concerns. We are committed to continuing that dialogue. We also look forward to working with you as you undertake your own deliberations on the 1993 FCMA Reauthorization.

I would be happy to answer any questions you or other members of the Committee may have.



# NATIONAL FISHERIES INSTITUTE, INC.

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## TESTIMONY OF

Richard E. Gutting, Jr.  
National Fisheries Institute

## BEFORE THE

## SUBCOMMITTEE ON FISHERIES MANAGEMENT

April 21, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Richard E. Gutting, Jr. I am the Vice President for Government Relations of the National Fisheries Institute (NFI).

The NFI appreciates this opportunity to testify on the fishery management program established by the Magnuson Fishery Conservation and Management Act.

The NFI represents 1,000 companies engaged in all aspects of the U.S. fish and seafood industry including harvesting, processing and marketing. NFI members operate vessels in most of the fisheries regulated under the Act, and at various times many of our members have served on the management councils and council advisory committees. Our members, and the millions of consumers they serve, have a vital stake in the proper management of our Nation's fisheries.

In February, the NFI along with other fishery groups cosponsored a two-day conference during which we discussed

several possible changes to the Magnuson Act. The 150 participants, who came from all parts of the country, expressed strong support for the basic structure of the Act. We did, however, review several areas of concern including the need to: maintain public confidence in the management system; reduce waste; and conserve international fisheries.

My testimony covers these three subjects and a fourth issue which was not discussed during the conference, namely the need for fishery managers to help provide assurance to consumers that seafood is safe and wholesome.

#### 1. Maintaining Public Confidence.

One of the key issues facing the regional councils is maintaining the trust and confidence of the public. This confidence can be shaken, and the integrity of the council system brought into question, if it appears that council members are voting on management measures to enrich themselves rather than conserve and fairly allocate the resources.

These are challenging times. Competition for fish is intense and some councils are devising quota programs which allocate fish to individual companies, or divide them up among competing groups. The numerous questions which must be answered are very complex and require a sophisticated understanding of both the resources and the people who harvest them.

Conflicts-of-interest can arise in many ways. Sportsmen benefit when they are able to set aside fish for their own exclusive use, and the sports industry is a big one, with profits to be made in the sale of equipment and services. Conservation advocacy groups, and even university professors and

government officials, must raise money from grants and other sources. So singling out commercial fishermen as the only people with potential conflicts of interest is too simplistic.

The answer is not to eliminate the requirement that experienced and knowledgeable people serve on the councils, nor destroy the basic concept that private citizens should participate in decisionmaking upon which the entire management system was built. Encouraging the people in a fishery to participate in decisionmaking fosters the understanding and group consensus building which are needed to make any fishery management system work.

There is, however, a dilemma. On the one hand, the knowledge and experience of council members are important. This means that council members often participate in some way in the fisheries for which they are responsible, or otherwise may stand to benefit from a management decision. On the other hand, council members should not be voting on issues involving their own personal gain. Thus, some sort of a balance must be struck.

The American people are holding federal officials to high standards of accountability. Maintaining the public's confidence in the integrity of fishery management is of vital importance to the seafood industry. Present safeguards may need to be strengthened. The NFI asks the Subcommittee to review this issue to insure that adequate protections are in place.

## **2. Reducing Waste.**

The seafood industry is increasingly concerned that our nation's fishery resources not be wasted through unwise



management or poor fishing practices.

This waste occurs in different ways. In some instances, fisheries are being closed before their potential yield is harvested because limits on the bycatch of non-target species have been exceeded. In other instances, regulations aimed at reducing bycatch require fishermen to discard large quantities of valuable fish and shellfish. In other instances, mandates to protect ocean animals have reduced harvests and fleet efficiency.

Congress began to address these problems in the last reauthorization of the Act. A funding mechanism and observer program were authorized for the North Pacific fisheries and a three-year research program was established to reduce the incidental harvest of finfish in the shrimp trawl fleets of the Gulf of Mexico and South Atlantic.

These were very constructive amendments. Unfortunately, there have been difficulties and delays in implementing them. We ask the Subcommittee to review what has happened and amend the Act, if necessary, so that the full benefits of these amendments can be realized.

The shrimp program, in particular, needs to be extended so that research on finfish bycatch can be completed. Funding and administrative delays caused this program to get off to a slow start. Substantial progress, however, is being made now and the program should be completed before new regulatory requirements are imposed.

The seafood industry also is interested in exploring other ways to reduce the waste of food. Longline commercial fishermen

in the Atlantic, for example, are planning an experiment in which undersized swordfish will be donated to Second Harvest. Second Harvest is one of the largest charitable organizations in the United States and distributes food to hungry people throughout the country. This voluntary effort by commercial fishermen promises to improve the scientific data base upon which management decisions are made, and to help those Americans who otherwise would not benefit from the swordfish fishery.

Solutions can be found if fishery managers, the industry, and interested members of the public work together cooperatively. In this regard we are concerned that the present regulatory environment, which relies exclusively on command-and-control strategies, needs to be enhanced with incentive-based solutions which reward individual initiative and innovation and which avoid punishing fishermen when they try to find ways of reducing waste.

Once again, the NFI asks the Subcommittee to review what has worked to reduce waste, and what has not worked, to insure that fishery managers and the industry have the tools they need to cooperatively address this problem.

### **3. Conserving International Fisheries**

One of the more contentious issues debated when the Act was amended in 1990 concerns the management of the highly migratory fisheries of the Atlantic, particularly those for Atlantic bluefin tuna and swordfish. Fleets from several nations fish these stocks in international waters, and both U.S. and foreign harvests are restricted under an international conservation program designed by the International Commission for the

#### Conservation of Atlantic Tunas.

International stocks such as these need international management. And they also need a U.S. program which is aimed at building a consensus among many nations, rather than one aimed at drawing artificial boundary lines on the ocean.

In 1990, the Congress wisely chose to transfer responsibility for managing the U.S. portion of these fisheries in the Atlantic Ocean from the regional councils to the Secretary of Commerce and to recognize that U.S. fishermen should not be put at a disadvantage over their foreign competitors by unilateral management decisions.

The basic structure of this program is sound. Unfortunately, the NMFS has failed to adopt an open process for developing management plans in which responsible officials discuss management options with interested persons. Perhaps this problem can be dealt with administratively. Perhaps legislation is needed.

Mr. Chairman, the commercial fishing industry has united behind a proposal which we made to NMFS to set up an open public process with involvement from the ICCAT Commissioners, the ICCAT Advisory Committee, and officials from the Commerce and State Departments. The failure of NMFS to adopt this proposal and the lack of adequate funding are the problems which continue to plague us---not the Magnuson Act.

The NFI asks the Subcommittee to investigate this issue and to take whatever corrective legislative action might be needed.

#### 4. Protecting Seafood Consumers.

Like any food, fish and shellfish can carry pathogens, toxins or contaminants when they are harvested which are capable of making consumers sick. Some of these sources of disease are natural to the marine environment, while others are associated with pollution.

Fisheries which cannot produce food which meets health standards need to be restricted. Consumers need to know that seafood production is being controlled so that adulterated product will not be sold to them. To accomplish this, fishery managers need to coordinate their activities with the Food and Drug Administration (FDA) which is responsible for administering those laws which govern the inspection and safety of fish and seafood.

For many years the FDA has worked in close cooperation with state officials to monitor the quality of near-shore waters, and to restrict the harvest of shellfish when necessary to protect the health of consumers. More recently, the FDA has worked with the National Marine Fisheries Service to restrict harvesting in some off-shore fisheries governed by the Magnuson Act. These NMFS-enforced restrictions, however, were accomplished on an ad hoc basis using legal authority which was implied from the Magnuson Act, rather than provided expressly.

Last month the Administration announced that the FDA will establish a new mandatory inspection program for fish and seafood using its present authority. This program will be based upon the Hazard Analysis Critical Control Point system which has been endorsed by the National Academy of Sciences and the seafood industry. This initiative, if properly designed and executed,

could significantly improve the present inspection of fish and seafood products.

Off-shore fishing areas should continue to be restricted by the NMFS when FDA officials determine that harvests would be adulterated under food safety law. Any such future restrictions, however, should be an integral part of the new mandatory program announced by the Administration. We also believe that it may be helpful to clarify the Magnuson Act authority needed by the NMFS to take such actions.

The Administration's inspection initiative will be published soon. The NFI requests that the Subcommittee review it to ensure that fishery management decisions are coordinated with food safety concerns. We also ask that any needed clarification of NMFS authority to close fisheries be included in the Magnuson Act.

In conclusion, the NFI appreciates this opportunity to discuss our views and perspectives with you. NFI's Board of Directors meets in two weeks to discuss a series of Magnuson Act issues and I hope to be able to share more specific suggestions with you after this meeting.

STATEMENT OF NORVILLE S. PROSSER  
FOR  
THE SPORT FISHING INSTITUTE  
ON  
H.R. 780, A BILL TO REAUTHORIZE THE  
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Presented to:  
The Subcommittee on Fisheries Management  
April 21, 1993

Mr. Chairman, I am Norville S. Prosser, Vice President of the Sport Fishing Institute (SFI), a non-profit fisheries conservation and education organization representing the interests of the sport fishing industry and over 50 million anglers. Since 1949, SFI has worked to conserve our nation's fisheries resources and habitat for public use and enjoyment.

The Magnuson Fishery Conservation and Management Act (MFCMA) is by far the most important piece of legislation governing the conservation and management of our nation's federal marine fishery resources. The success or failure of the marine component of the sport fishing and boating industries is contingent, to a large degree, on the success of management action guided by the MFCMA. According to the National Marine Fisheries Service (NMFS), in 1991, marine recreational fishing attracted 13 million participants. SFI estimates that this activity generated nearly \$17.6 billion to the national economy, including \$4.5 billion in wages and salaries for the approximately 290,400 full-time equivalent jobs created.

Although passage of the original MFCMA in 1976 successfully controlled foreign fishing in U.S. waters, it has largely failed to control overcapitalization and overfishing by domestic fishing interests. A recent report by NMFS indicated that 43 percent of the marine fish stocks for which assessments have been conducted are presently overexploited. The status for over half of the remaining fish stocks is unknown. From a recreational industry perspective, the outlook is even more bleak. NMFS reports that out of a total of 26 recreationally-important species along the U.S. east coast 18 species or 67 percent are overexploited.

Most assuredly, the recreational fishing industry is fundamentally concerned with the deficiencies of the management system under the Act which has, in so many cases, failed to provide for wise resource conservation and effective management, and instead, has allowed continuing exploitation toward growth and recruitment failure of economically and socially important fish stocks.

#### CONSERVATION MUST COME FIRST

Clearly, the primary objectives of the MFCMA, and the Council system it created, -- namely, the conservation and management of marine fish stocks for long-term sustainability -- are not being uniformly achieved. To do so, the long-term conservation needs of the resource must be placed before the short-term social and economic needs of the nation (recreational and commercial fishermen alike.) The Act and the Council system must strengthen their emphasis on conservation. This can be done in the following manner:

- o The recreational fishing industry shares the concern that the concept of "optimum yield" as applied by the Councils, has allowed harvests above the level of maximum sustainable yield. The MFCMA must be amended so that fishing mortality or total allowable catch (TAC) can not exceed the maximum sustainable yield. For overfished or depressed stocks, TAC should reflect specified long-term target levels and recovery/rebuilding schedules. Optimum yield (as it is currently defined in the Act) should only be used as a mechanism to determine how the TAC should be allocated. The MFCMA should be amended to require that overfishing for each species in a fishery management plan be defined, by making the non-binding guidelines under Section 602.11(c) (50 CFR Part 602) have the force of law.
- o In the absence of scientific certainty, the Councils must adopt a precautionary, risk-adverse approach to fisheries management. Conservation and management measures should minimize risk by providing a margin of safety to act as a buffer against overfishing and damage to food web associated species and ecosystems.

#### MINIMIZE BYCATCH PROBLEMS

The use of non-selective fishing gear -- essentially, any type of gear that catches significant amounts of non-targeted fish and other marine species -- causes intolerable waste and serious conservation problems. Worldwide, bycatch amounts to an estimated 12 to 20 billion pounds of sea life every year, or 20 percent of the overall catch. In the U.S. alone, it is estimated that commercial longlining for tuna and swordfish accounts for an estimated bycatch of 20,000 to 25,000 billfish and nearly 16,000 metric tons of shark species, while the Gulf of Mexico shrimp trawl fishery catches and discards dead nearly 10 billion fish a year. Many of these species such as red snapper, croaker, sea trout, red drum, Spanish and king mackerel, are extremely valuable recreational species.

The MFCMA is largely silent on the subject of bycatch and dead discards. Bycatch is restricted only where it threatens a species protected in a non-fishery statute (e.g., dolphins and sea turtles). The MFCMA should include a definition of bycatch and make it a national policy to minimize the negative impact of bycatch on fish populations and the marine ecosystem. Researchers should acquire better data on the extent of bycatch and its impact on each fishery, and managers should include provisions to reduce the incidental capture of fish and other marine animals in all fishery management plans.

#### STRENGTHEN PROTECTION OF CRITICAL MARINE HABITATS

The single greatest long-term threat to fisheries productivity is the continuing degradation of fisheries habitat. Coastal, estuarine and riverine habitats essential to most of the the recreationally and commercially valuable fisheries species continue to be degraded and lost as a result of physical habitat alteration (e.g., dredging and filling), pollution, freshwater flow diversion, and nutrient overenrichment. The MFCMA gives neither the NMFS nor the Fishery Management Councils direct

control over regulated activities, even though they may severely reduce fish abundance. The Act should be amended so that NMFS, and the Councils through NMFS, be given the authority to modify, restrict or prohibit projects or activities which alter, degrade or destroy critical fish habitat. In addition, the Act should require the Councils to designate habitat critical to achieving and maintaining the maximum sustainable yield of the species or species complex in each and every fishery management plan. This designation would include important areas, and specifications of physical and chemical conditions that must be maintained.

#### IMPROVE CONSERVATION OF HIGHLY MIGRATORY SPECIES

The conservation of highly migratory species must be improved by omitting any language which ties the hands of the U.S. to implement more stringent conservation measures than those adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). By doing so, the U.S. can take the lead, in not just words but action, in the proper management and conservation of Atlantic tuna species.

Specifically, the following legislative changes or amendments must be made to both the Atlantic Tunas Convention Act and the MFCMA:

- o **Delete** Section 206(b)(K) of the Atlantic Tunas Convention Act which states that "no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed pursuant to a recommendation of the Commission."
- o **Delete** Section 110(b)(3)(E) of the MFCMA which states, "With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota."

In addition, Section 110(b)(3)(A) of the MFCMA must be amended so that the authority to manage and implement regulations with regards to highly migratory species along the U.S. east coast, Gulf of Mexico and the Caribbean is returned to the five Regional Fishery Management Councils of that region. As it stands now, this authority lies with the Secretary of Commerce.

Our experiences with the development of the Fishery Management Plans for Atlantic Shark Resources and Atlantic Billfish have taught us that the Secretary of Commerce is unwilling to commit the resources necessary to develop critical fishery management plans for highly migratory species in a timely or expedient manner. Expediency is particularly important in the fishery management process since almost every plan that has been developed and implemented in the past has been undertaken out of serious concern for the imminent collapse of a fishery.

In order for the Councils to effectively manage highly migratory species in a multi-Council format, the voting procedures must be changed. Rather than giving each Council in a multi-Council developed plan veto power, acceptance of a plan should instead be based on a simple majority of the total Council members voting with those Councils involved in a highly migratory species fishery management plan.



## FAIR AND BALANCED COUNCIL REPRESENTATION

Although the composition of Council membership has shifted slightly since 1976, recreational interests continue to be under-represented on many of the Councils. Recreational angling interests should be represented fairly and equitably on all Councils. Marine recreational fisheries not only continue to grow in popularity with the American public, but the commerce it generates (over \$17 billion annually) and the employment that it creates are extremely important components to the economics of the nation as a whole.

## CONFLICT OF INTEREST

The issue of conflict of interest on the Regional Fishery Management Councils is valid. If the MFCMA were amended to have Section 602.11(c) Guidelines have the force of law and overfishing and stock rebuilding be clearly defined and vigorously implemented, the Council's role would change to allocation rather than management; i.e., allocating the harvestable surplus between commercial and recreational users. Scientists should decide (based on clearly defined goals) the total allowable catch and the Councils should decide who, how, where, and when the fish are harvested. Until the MFCMA is amended to resolve the perception of conflict of interest of Council members, the present mechanisms should be more vigorously applied. Presently, the politically appointed Council members take an oath to conduct themselves, "... at all times according to the rules of conduct prescribed by the Secretary of Commerce." Should anyone be concerned with violation of that oath, they should bring the facts to the attention of the appropriate authority in the Commerce Department for full and objective investigation. Specifically, the oath states:

"I, \_\_\_\_\_, as a duly appointed member of a Regional Fishery Management council established under the Magnuson Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is freely given and without mental reservation or purpose of evasion."

## MARINE FISHERIES MANAGEMENT TRUST FUND

A Marine Fisheries Management Trust Fund should be created to provide enhanced funding necessary for implementation of programs such as, but not limited to: special management programs, increased law enforcement, controlled access, observer programs, data collection and market incentive systems. The Trust Fund should not be a replacement for normal appropriations. The source of income for the Trust Fund should be user-fees

and/or excise taxes from both the commercial and recreational sectors but must be equitable in their application.

## CONCLUSION

The MFCMA and the Council system it created is far from perfect and needs to be changed. However, the Sport Fishing Institute does not necessarily agree that the traditional, political approach we have taken in the past to evaluate and subsequently amend the MFCMA has been the most efficient and effective, nor the best for the conservation and management of our marine fish stocks. The Act has repeatedly been amended with too little apparent benefit to the nation's fishery resources and resource users. We suggest chartering of a comprehensive Magnuson Review Commission similar to the Eastland Commission.\* The objectives of this new Commission would be to fully evaluate the effectiveness of the Act. This evaluation would include the active participation and involvement of all concerned interests in U.S. marine fisheries, including but not limited to: commercial harvesters, processors, and retailers; the sport fishing industry, including charter and party boat operators; marine recreational anglers; conservation and environmental organizations; and consumer groups. Like the Eastland Commission it is suggested that a time frame be defined and an appropriation authorized to employ a staff to carry out the mandate of the Commission. This will allow those contributing to the problem to be part of the solution.

The Eastland Commission was created by Senate Concurrent Resolution Number 11 which unanimously passed the House and Senate in December 1973.

Testimony Before the House Subcommittee on  
Fisheries Management  
on the  
Reauthorization of the Magnuson Fishery Conservation  
and Management Act

by

Larry Merculieff  
April 21, 1993

Thank you for this opportunity to present testimony on the Magnuson Act Reauthorization. My name is Ilarion Merculieff, Manager for the City of St. Paul in Alaska's Pribilof Islands which are located in the middle of the Bering Sea, and I am also coordinator of the Bering Sea Coalition. The Coalition, composed of coastal communities along the Bering Sea, is focused on the health of the Bering Sea ecosystem and the viability of indigenous cultures adjacent to the Bering Sea.

The community of St. Paul has been active in the area of long term conservation of fishery resources in the Bering Sea for the past 20 years and is recognized in Alaska as a leader on these issues. We were instrumental in securing changes to the DYNUMES modelling for fish interactions in the early 70's, a reassessment of the modelling system for pollock fish stocks in the mid-eighties, and in calling public attention to precipitous and sustained declines of at least 14 so-called higher tropic species in the Bering Sea since the mid-70's. During the course of our work, in terms of the Bering Sea ecosystem, we have reviewed almost all scientific research conducted in the Bering Sea since the late 1800's. We are currently co-sponsoring research on the Pribilof near-shore marine ecosystem by a multi-disciplinary team from the Russian Academy of Sciences and the Russian Institute of Nature Preserves. This effort is now entering its 3rd year. In addition, Pribilof Aleuts have collaborated with two research associates from the Arctic Institute of North America and Canada (in Calgary), Susanne Swibold and Helen Corbalt, in a unique multi-disciplinary, cross-cultural research program spanning over a decade. This research focuses on the dynamic interactions between environment, culture, technology and economics.

We believe that the Magnuson Act has worked very well in many areas since it came into effect in the 70's. The fisheries are now Americanized, regional management councils have been established providing a forum for public input and a process for scientific management. We now have a new opportunity to improve this Act in light of knowledge gained about the environment and marine ecosystems since the Act was passed almost twenty years ago. Scientists, managers and the fishing industry now understand the full impact that inadequate research and management can have on the viability of any fishery-given the fishing collapses around the world, including the George's Banks, Grand Banks, North Sea, Berents Sea and Eastern Canada in the Northern Hemisphere. It behooves this committee, if it has not already done so, to study the fundamental causes behind these collapses, in hopes that future tragedies can be avoided as much as is humanly possible.

In our study of fishery management and scientific research in the Northern Hemisphere we found several significant barriers to effective fishery research and management which still exist today:

1. **Institutional Barriers.** In all fishery collapse cases, other marine-dependent species in connected food webs showed signs of food stress long before fishery collapses actually occurred. Responsible research and management institutions which should have been closely coordinated, particularly in exchange of information, were focused on their own missions. Coordination was ad hoc. This, coupled with the fact that no institution had the mission of synthesizing scientific and other information, made it impossible

for anyone to step forward with any credibility to warn of impending fishery collapses.

2. **Systemic Research Barriers.** Research is single-species oriented and highly specialized within disciplines, making it difficult, if not impossible, to document the connection between declines of species in the same food web, let alone connected food webs. Scientists in different disciplines, even within the same agencies, do not coordinate, exchange, or synthesize data except on an ad hoc basis, if at all. Politically, scientists are put to the impossible test of proving a hypothesis definitively before policy-makers take action. I would like to meet one scientist in the world who will say any research finding is definitive. It is a standard which is convenient for those who seek short-term profits in a fishery at the expense of long-term gain.

3. **Research Bias Barriers.** We see a very disturbing trend of systematically excluding independent researchers from participating in important research in all fields. Even environmental groups are using in-house researchers. Such a system discourages new perspectives in research and management and increases the possibilities for mis-directed research and management.

4. **Cultural Bias Barriers.** Environmental managers around the world are beginning to recognize the value of the observations and knowledge of indigenous peoples (who have lived in an area for perhaps thousands of years) in understanding what may be happening in their bio-region. However, the scientific and management communities consider indigenous knowledge and observations "anecdotal" because they cannot incorporate this wholistic - versus specialized-information into their "systems". We, who have lived in the Bering Sea for nearly 10,000 years, noted the decline of steller sea lions ten years before they were declared threatened, yet our observations were given no credibility within the scientific and management communities despite numerous efforts to flag these declines in many official forums.

In closing, we would like to note for the record once again, that these exact same barriers exist today in the Bering Sea. Conventional wisdom is telling everyone that the fishery is healthy in the Bering Sea but this wisdom ignores the fact that fourteen key species are in decline, at least six of which are in the pollock food web. Three of these species are already classified as threatened or depleted under the Endangered Species Act or MMPA. We predict that more will follow in quick succession unless there are fundamental changes in research and management paradigms.

Specifically, we recommend: 1) evolution of single-species management into ecosystem management regimes; 2) eventual elimination of institutional barriers through the appropriations process where inter-agency and inter-disciplinary research and management are mandated; 3) that mechanisms be installed to utilize independent researchers and cross-cultural perspectives on a multi-national basis; and 4) restructuring of management systems in a way that reflect these new paradigms.

If anyone is interested in our specific observations and recommendations regarding Bering Sea research and management, we have submitted it for the record.

Thank you.

**THE BERING SEA:  
RESEARCH\MANAGEMENT CHALLENGES  
AND  
RECOMMENDATIONS**

**LARRY MERCULIEFF, COORDINATOR  
THE BERING SEA COALITION  
c/c THE CITY OF ST. PAUL  
ST. PAUL ISLAND, ALASKA 99660  
DECEMBER, 1992**

## PREFACE

The information provided below has been selected to highlight the latest research information concerning the status of higher trophic species in the Bering Sea and North Pacific. Available data indicates that fur seals, Steller sea lions, harbor seals, thick billed and common murre, red and black legged kittiwakes, Spectacled and Steller eider, red-faced cormorants, pollock, halibut and cod stocks are in a state of decline. Subsistence hunter observations indicate a possibility that King and Common eider populations may be decreasing.

### FUR SEAL POPULATION AND REPRODUCTIVITY TRENDS

CURRENT CLASSIFICATION:	DEPLETED
PEAK POPULATION THIS CENTURY:	1.8 MILLION (EARLY 50'S - KENYON)
POPULATION IN EARLY 70'S:	1.2 MILLION
CURRENT POPULATION:	700,000 - 900,000
DECLINE TREND:	6.5% TO 7.8% FROM 1976 TO 1983
CURRENT TREND:	APPARENT STABILIZATION, ALTHOUGH PUP POPULATION DECREASING ON ST. GEORGE AT 6 TO 7 PERCENT/YR.

(SOURCE: NATIONAL MARINE FISHERIES SERVICE)

## DISCUSSION

We believe that the apparent stabilization is temporary, given other indicators of health of the Bering Sea and Gulf of Alaska ecosystems (discussed throughout this summary). It is logical to assume that any species in decline will sustain such a decline until their population achieves parity with available food supplies (which may be the case with fur seals); however, the fur seals will resume their decline if their food resources continue to be reduced. The scientists and researchers agree that most of the seal mortality is occurring at sea, primarily among juvenile and female seals, perhaps during their late fall and winter migrations.

We are observing an inordinate growth in the male fur seal population as a direct result of the cessation (in 1985) of the annual commercial seal harvest of 16,000 sub-adult males, consequently increasing the number of non-productive seals. Little is known about the affects of the change in male to female ratios on reproductivity.

Researchers believe that fur seals are not experiencing food stress because average pup weights equal the average weight taken during the peak population of fur seals in the late 50's and given the fact that seals are opportunistic feeders. However, fur seals may lose weight and mass during their migration (as a result of food stress) which may be restored prior to their arrival in the Pribilofs (Trites, 1991).

## RESEARCH\MANAGEMENT CHALLENGES AND RECOMMENDATIONS

Despite the fact that fur seals have been officially classified as depleted, there has been no dedicated budget for fur seal research, and formal coordination between researchers and managers from countries where fur seals migrate was eliminated since the Fur Seal Treaty was allowed to lapse in 1985. This has materially hampered effective and comprehensive monitoring of the fur seal population. Fur seal managers are forced to use volunteer graduate students and to seek funds from other NMFS programs. Efforts must be mobilized to develop a dedicated budget, with significant participation of Pribilof Aleuts in its construction. We believe that effective research on seals must incorporate a multi-disciplinary, multi-national, ecosystem approach in contrast to the single species, highly specialized approach currently in practice. Without understanding what is happening to other components in the ecosystem which affect fur seals, the causes for declines cannot be determined.

pollock has been a major traditional food source for fur seals in the Bering Sea and Gulf of Alaska, although little is known about the foraging behavior of seals. Seals are opportunistic feeders and thus would shift from one food source to another when one source becomes depleted. Nothing is known about the effects on seals if there are dramatic shifts in food sources from traditional sources in terms of nutritional quality and changes in foraging strategies. Analysis is needed on the effects of fishing for fur seal prey adjacent to fur seal rookeries during the breeding season, and assessments should be made on fur seal food budgets across its range as part of the fishery quota decision-making process.

Current research methodology and effort makes it impossible to determine if there is any correlation between fur seal decline trends and declines of other species in the same food web. Since mortality is occurring amongst juveniles (which do not return to land for two years after birth) and females during their fall/winter migrations, efforts need to be made to evaluate fur seal predator/prey/competitor interactions in the Gulf of Alaska. We do not know, for example, what effects the dramatic increase in salmon populations in the Gulf over the past fifteen years has on fur seal prey.

#### SEA LION POPULATION AND REPRODUCTIVITY TRENDS

CURRENT CLASSIFICATION:	THREATENED
PEAK POPULATION THIS CENTURY:	140,000 (NOT INCLUDING PUPS AND ANIMALS IN THE WATER)
POPULATION IN THE EARLY 70's:	105,000
CURRENT POPULATION:	34,835 (DOWN TO 7,000 IN EASTERN BERING SEA FROM PEAK OF 25,000)
DECLINE TREND:	SLOW RATE OF DECLINE FROM 1960 TO 1975, INCREASED RATE (6.5% TO 7%) FROM 1975 TO 1985
CURRENT TREND:	SHARP DECLINE FROM 1985 TO 1989 (APPROX. RATE 50%). DECLINE RATE CONTINUES, BUT AT SLOWER RATE.
(SOURCE: NMFS MARINE MAMMAL LAB)	

#### DISCUSSION

Since 1977, all sea lion populations from Kenai to Kiska have been experiencing a sustained and significant decline trend. The only exception are stocks along the S.E. Alaska and Canadian coast. Some research indicates that female sea lions have diminished in size and length from 1975 to 1985 (Caulkins and Goodwin, 1988). If this data is correct, food stress is a probable cause; however, analysis is required to determine if such diminution is indicative of temporary food stress (as suggested by Trites in fur seals). Mortality rates have increased, and reproductivity is depressed - consistent with affects of food stress. It appears that younger sea lions are subject to the greatest rates of mortality. In the Bering Sea, pollock has traditionally been a major food source. Sea lions are amongst the top three of twenty six marine mammals which eat pollock (Marine Mammal Commission publication, 1992). A government sea lion working group has been formed to develop strategies for dealing with the decline trends. The primary strategy has been to establish no-fishing zones adjacent to breeding rookeries.

#### RESEARCH\MANAGEMENT CHALLENGES AND RECOMMENDATIONS

We believe that a multi-disciplinary, multi-national, ecosystem approach to research of sea lions is essential to understanding causes for declines as opposed to the single species, highly specialized orientation of current research efforts. Scientists are unable to determine if there is any correlation between sea lion declines to the decline of other species in the same food web.

Research needs to be conducted on food web connections of predators, prey and competitors, as well as the food budgets required to sustain specific population levels across their range. As with fur seals, assessments should be made on the effects of fishing for sea lion prey adjacent to their rookeries during the breeding season. As with fur seal research, some analysis is required on possible connections between sea lion declines and the phenomenal growth of salmon rearing programs in the past fifteen years.

#### HARBOR SEALS

Little data has been gathered on harbor seals due to their relative minimal economic importance, and effective management programs have not been developed. Baseline data has not been established for many harbor seal rookeries. Tugidak Island, near Kodiak Island, has one of the largest colonies of harbor seals in the world. In 1976, a 62% decline during the pupping and molting period from previously noted peak populations was documented, and a 75% decline in 1982 (Marine Mammal Commission publication, 1992). It is known that decline trends are being experienced across the harbor seal range in Alaska, except for Southeast Alaska. Our recommendations for research and management of harbor seals are the same as noted for fur seals and sea lions.

#### EASTERN BERING SEA SEABIRDS

##### KITTIWAKES (RED AND BLACK LEGGED)

PEAK POPULATION THIS CENTURY:	NO BASELINE DATA AVAILABLE UNTIL 1976.
POPULATION IN EARLY 70's:	222,220 (RED-LEGGED) 323,000 (BLACK-LEGGED)
CURRENT POPULATION:	UNKNOWN
DECLINE TREND:	98% REPRODUCTIVE FAILURE RATE BEGINNING IN 1976 (OUT OF EVERY 100 CHICKS HATCHED, 98 DIE)
CURRENT TREND:	ST. PAUL POPULATION DECLINED 80% AND 63% IN ONE COLONY COUNTED ON ST. GEORGE SINCE 1976.

##### MURRES (THICK BILLED AND COMMON)

PEAK POPULATION THIS CENTURY:	BASELINE STUDIES NOT DONE UNTIL 1976
POPULATION IN EARLY 70's:	150,000 ESTIMATED IN 1976
CURRENT POPULATION:	37,000
DECLINE TREND:	LOSS OF 56% OF POPULATION (AT BEST) OR 80% (AT WORST) SINCE 1976 ON ST. PAUL.
CURRENT TREND:	DECLINES STILL CONTINUING

(SOURCES: U.S. FISH AND WILDLIFE ANNUAL REPORTS AND GOLOVKIN, 1991)

#### DISCUSSION (KITTIWAKES AND MURRES)

Recent research indicates dramatic shift in diet of these species, from class 1 pollock and cod to other species (Hunt, 1990, personal conversation) indicating lack of availability of these food sources. Food stress is readily apparent through physical observation. Bird chests are collapsed and chicks are too weak to maintain their hold on cliff ledges. Pribilof Red-legged Kittiwakes may be at the point of becoming endangered. Of the five locations where Red-legged Kittiwakes breed in the world, 90% of the breeding colonies are in the Pribilofs, and it is these colonies that are in trouble.

Note: Dr. Alexander Golovkin documented (in his 1991 research) the decline of most cliff nesting seabirds on St. Paul, including the red-faced cormorant, horned and tufted puffins and auklets.



In addition, there are indications of decline trends in eiders, although it is not known if these declines are related to other seabird declines. It is known that the Spectacled and Steller's eider populations are down considerably.

#### RESEARCH\MANAGEMENT CHALLENGES AND RECOMMENDATIONS

Since 1976, funding for bird research in the Bering Sea has diminished considerably. The first and only full bird count on the Pribilof colonies since 1976 was done in 1991 by Dr. Alexander Golovkin, under sponsorship of the City of St. Paul. The U.S. Fish and Wildlife Service is now in the process of conducting full counts on both St. Paul and St. George. Previously the Minerals Management Service funded baseline research in preparation for environmental impact statements for offshore oil and gas lease sales. We believe that a multi-national, multi-disciplinary research approach is required to understand causes for dramatic declines, as opposed to the single species research orientation. Funding is needed to determine winter feeding habits and food availability at-sea throughout their foraging range. Research is required on the effects of fishing for seabird prey adjacent to major bird colonies during their breeding season.. Food budget calculations are required across the ranges for the different species.

#### POLLOCK

Historically, sixty percent of the sea lion diet and fifty eight percent of the Northern fur seal diet has been age 1 pollock. In addition, murre, kittiwakes, cormorants, harbor seals and halibut are some species that have pollock in their diet.

The following information was taken from "Statement to the North Pacific Fishery Management Council On Setting the ABC's (Allowable Biological Catch) and TAC's (Total Allowable Catch) for the 1991 groundfish fisheries in Alaska waters", presented by the Aquatic Resources Conservation Group from Seattle, Washington:

"...Regardless of those revised biomass estimates, the trawl surveys and the assessment models show a stagnating-to-declining pollock population trend over recent years. It must be noted that the declining trend was used by the plan team to justify the downward revision of the ABC for pollock in the Aleutian region..."

"...There have been no new strong year classes recruiting to the population in recent years, and none are projected to occur until at least 1992. If that trend continues, one might expect more precipitous declines of the population biomass in the future..."

"...Second, populations of several marine mammal and bird species living at least partially in recent years. These include steller sea lions, harbor seals and black-legged and red-legged kittiwakes. Scientists have raised concern about the potential direct (habitat interference) and indirect (competition for food) interactions between fisheries and mammal/bird feeding and living habits...Until quantifiable information is available concerning these interactions, and if the populations do not rebound from their declining trend, the ABC for fish species on which those mammals and birds are known to feed should be set conservatively..."

Pribilof Aleuts, concerned about indications of food shortages for birds and mammals connected to the pollock food chain, hired an independent scientist, Ian Fletcher, from the Great Salt Bay Experimental Station in Maine, to assess the pollock modeling system used by the Northwest and Alaska Fishery Research Center. The following are excerpts from Fletcher's report submitted to the North Pacific Fishery Management Council by Pribilof Aleuts in 1985:

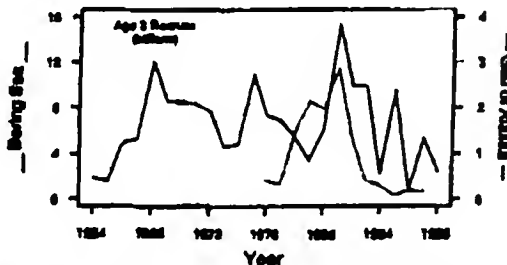
"Our figure 3 shows the plots, from table 2, of estimated numerical abundance of age 2-9 pollock, the estimated stock biomass, and the annual surplus production of the fished stock. The decline in numerical abundance from 1980 to 1983 is the result of small yearclasses in 1978, 1979, 1980 and 1981. Stock biomass increased somewhat from 1980 to 1981 and showed a 'moderate decline' thereafter. But stock biomass, by itself, is not a good indicator of stock condition in the case of an interoparous breeder, especially when the stock contains many age categories of fish..."

"The pollock stock increased in biomass the year following the start of the decline in numerical abundance, because of the weight gained by growing fish from previous years' strong recruitment (entry of the 1976 and 1977 yearclasses). The decline in stock biomass after 1981 appears moderate in comparison to the drop in numerical abundance only because the deficiency in small fish affects total biomass less than it affects total numbers. (A few large fish are equal to small fish in weight, but numbers are numbers). The drop in productivity after 1979 is especially ominous because it signifies continued overfishing. That is, surplus production declined steadily after 1979, even though stock biomass increased from 1978 to 1981."

"In summary, then, numerical abundance declined after 1980 owing to the failed recruitment; surplus production shows a decline after 1979 owing to overfishing of the stock."

"In contrast to a reported 'moderate decline' in the pollock stock, the new results show a stock heavily overfished, with productivity depressed, and abundance in a precipitous decline owing to a succession of failed yearclasses. Unless fishing is curtailed, we believe a stock collapse likely."

The following is a graph for age three pollock numbers developed by Andrew Trites, Department of Fisheries and Oceans at the University of British Columbia, compiled from official U.S. Government sources:



This graph depicts peaks and lows for age 3 pollock recruits in the Bering Sea (in billions) taken from Lloyd and Davis (1989) and Weststad and Traynor (1990). Note that the first cycle between peak and low numbers is about six years; the second cycle is about four years; the third cycle is about three years and the last two cycles about two years. This decreasing trend between up and down cycles is indicative of overfishing; and the trend, as depicted graphically, is a "pollock population heart attack" in process.

Pollock catches in the so-called "Donut Hole" have plummeted, resulting in a joint closure of this zone by Russia and the U.S. Scientists documented substantially reduced spawning of pollock in the Bogoslov zone.

Note: The International Pacific Halibut Commission is predicting declines in halibut stocks and are attempting to stabilize or increase halibut numbers by reducing incidental take of halibut. Research is required on the predator/prey/food web connections of halibut in order to determine the primary causes for halibut declines. Incidental take restrictions may "superficially" slow or arrest halibut declines. Increase in crab populations due to declines in predators may affect availability of food for halibut.

## DISCUSSION

All species connected in the pollock food web in the Bering Sea and North Pacific are experiencing severe declines due to food stress. We believe the declines will have a ripple affect throughout the entire Bering Sea and North Pacific ecosystem, possibly causing an ecosystem collapse, or at a minimum, bringing certain species to the brink of extinction. Such a result will affect all species in the Bering Sea as well as those species migrating through the Bering Sea to the Bering Straits and Chukchi Sea. Failure to address these declines in a comprehensive fashion will have major consequences for economic activities from Pacific Northwest to the Arctic.

## RESEARCH\MANAGEMENT CHALLENGES AND RECOMMENDATIONS

Management of the pollock fishery cannot be done outside the context of management of interconnected species and the understanding of the effects of changes in climatic and oceanographic conditions. Sea temperature changes, sea ice conditions, high seas driftnet entanglements, El Nino cycles, increase in predator populations, and possible overfishing are factors which may act in concert, or individually, to cause the declines of higher trophic species. Even if this is the case, the commercial fishery will be targeted by some animal rights and environmental groups as the cause for the declines. The inherent danger in this over-simplistic conclusion is that the general public (and thus the research and management institutions) will focus on simplistic answers. Real solutions lie in comprehensive research and management approaches yet to be developed. Research and management in the Bering Sea and North Pacific are fragmented and piecemealed.

Reductions in the amount of pollock taken in commercial fisheries and/or geographic/season restrictions, and/or control of predator populations may be the only management tools available to stabilize and/or to reverse trends of species declines in the pollock food web. Calculations are required for the amount of fish required by each species in the pollock food web in order to develop a "pollock allocation budget" for commercial and wildlife use; taking into account when and where pollock is the most important prey for declining species. Studies on fur seals, for example, calculate energy budgets, which are not converted into the number of fish of the age-class required by seals during periods when pollock are the most important prey.

We believe that individual migratory stocks of pollock must be managed individually. The system used by North Pacific Management Council does not regulate take of individual migrating stocks because data on whether or not individual stocks exist has not been developed. Genetic tagging is now underway to determine if distinct stocks exist. The salient point is that bird and marine mammal populations in different geographic areas of the Bering Sea and North Pacific may utilize pollock from specific migratory stocks. By setting a general catch level for pollock applicable throughout the Bering Sea and catch levels for the North Pacific, overfishing of particular migratory pollock stocks can occur. There may be at least two distinct pollock stocks in the Bering Sea which, in all likelihood, commingle. If there is substantial commingling between the U.S. and Russian stocks (for example) Russian management will have significant implications for the health of the overall biomass of pollock. By the same token, there may be multiple segments of the same stock which migrate to different areas at any given time of the year. For this reason, consideration must be given (at a minimum) to management of fishing activities adjacent to major wildlife colonies and rookeries during their breeding season.

Consideration must be given to the definition of overfishing. Overfishing can occur if pollock availability is reduced at a point in time and location that it creates food stress for any higher trophic species. This may occur even when the overall pollock biomass is large and stable.

Management of pollock and all similar fisheries is based on setting Allowable Biological Catch (ABC) levels and establishing a Total Allowable Catch (TAC) level below ABC. The assumption is that this is a conservative approach which will ensure a large and stable fish biomass.

Such a system does not input food budgets for pollock consuming competitors. Instead, other competitors are managed on a basis of optimum sustainable population. OSP levels are not easily determinable. The National Marine Fisheries Service, for example, utilizes population levels in the 1950's as the benchmark for determining (in 1988) that fur seals are depleted because they are supposedly at least 50% below OSP. The OSP is supposed to take into account the carrying capacity of the ecosystem. If this principle was properly applied, the fur seal population today is theoretically at levels the carrying capacity can support - thus seals are at 100% of OSP even while their populations are decreasing. Given this, the OSP standard can be used subjectively and thus it is not adequate for management of marine animals. The point is that OSP standards require that marine mammal populations go to levels which threaten their viability before any corrective actions are taken. Such a system will always force fishery management and the fishing industry to react to crisis.

#### FINAL COMMENTS

Most field scientists and many resource managers readily agree that more multi-disciplinary research and cooperative management is needed in addition to the single species research programs now in existence. They are unable to achieve this due to budgetary, political and institutional constraints. Several research and management agencies are attempting to construct species interaction models and/or they are formalizing cooperative agreements with other institutions and disciplines. These efforts need to be institutionalized through policy directives at the highest levels of government across all resource management programs, and the necessary funding appropriated.

New approaches to research/management and new alliances are needed to meet the challenges of the next century in terms of wildlife, habitat and environment. The fishing industry has a stake in the plight of wildlife and health of marine ecosystems because these things will effect where, how, when and how much they fish. Groups involved in hunting and gathering have a stake in the same things because their culture and food sources are dependent upon them. Scientists and researchers, whose work directs much of the management of the wildlife and marine ecosystems, have a stake because their livelihood could be jeopardized if they are unable to provide information needed to understand what is going on in time to prevent a crisis. In short, all of these groups are motivated by economics and all have a stake in the health of individual species and the marine ecosystem.

Without forging new alliances, these groups are likely to become increasingly polarized. The fishing industry may find themselves pitted against native groups and environmentalists if they operate independent of consideration of these groups. Native groups and environmentalists may lobby for more restrictive legislation and may engage in litigation, which in turn, will increase business costs and may decrease fishery production. Scientists and researchers, caught in the middle as a result of the polarization, may either go without direction or their research will follow the agenda of whoever prevails on any particular issue at any given point in time. All will suffer equally because polarization will mean continued or increasing fragmentation of resources, talent, research and effort focused on finding solutions to the declines.

By the same token, ecosystem approaches to research and management need to be pursued vigorously. This is not to say that single species research is not important. Single species research is essential to the eventual construction of ecosystem approaches. Everyone acknowledges that development of ecosystem approaches will take time and is costly and complex. Nevertheless, the first steps can be taken towards this goal by forming a multi-disciplinary research and management teams.

Fresh perspectives on the research and management of marine systems must be pursued. Conventional approaches are inadequate to the task as evidenced by the Northern hemisphere fishery collapses (and the consequent detrimental effects on marine dependent wildlife populations) in the Grand Banks, George's Bank, North Sea and Berents Sea. Independent researchers, unhampered by institutional and political constraints, should be included in development of new approaches. Likewise, culturally based subsistence users have unique observations and experience which can substantively contribute to research and management. Efforts must be made to meaningfully involve these users in the decision-making process.

BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES

TESTIMONY OF ROBERT G. HAYES  
ON BEHALF OF COASTAL CONSERVATION ASSOCIATION  
ON THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

April 21, 1993

Submitted by:

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Good afternoon. My name is Robert Hayes and I am the national counsel to the Coastal Conservation Association (CCA). I want to address today only three of the many issues that are now being raised to improve the management of national fisheries through the Magnuson Act. You are faced today with three compelling areas for amendment to the Act which, if done in conjunction, will restore confidence in the management system and allow that system to restore and rebuild our marine fisheries. The three areas I will address are: improve the planning and regulatory system, restore the credibility of the management Councils and reforming the management of interjurisdictional fisheries. First, I would like to tell you a little bit about the Coastal Conservation Association.

The Coastal Conservation Association began with a small group of sport fishermen in Texas in 1978. Since that time, it has grown to include 45,000 members, with chapters and state organizations in fourteen states. As an organization, it is composed of the Gulf Coast Conservation Association (GCCA which has members in Texas, Louisiana, Mississippi and Alabama); the Florida Conservation Association; the Atlantic Coast Conservation Association (ACCA has members in South Carolina, North Carolina, Georgia and Virginia); and the newest chapters in the New England Coastal Conservation Association. CCA provides direct financial support to programs that enhance the resource, such as its support of the redfish hatchery facilities in Texas. It also fosters education programs for youths and research programs designed to provide a greater understanding of the resource. CCA members actively participate in marine resource policy at the local, state, regional and national levels.

CCA is composed of marine recreational fishermen who want to conserve the resource for the public, recreational and commercial interests alike. We are trying to promote a greater conservation ethic through the organization and institutions that manage our resources. CCA is a pro-resource, something that most users, commercial and recreational, support.

#### Improving the Council Management and Regulatory System

The Magnuson Act is an unusual statute. In today's terms, it is inclusive of all interests. It contains a lengthy planning and management process that allows for the maximum input into the development of policy at the Council and the Secretarial levels. By the same token, it takes an enormous amount of time to make simple regulatory changes. This time barrier has progressively led to a public perception of ineffectiveness in the management system. Take a few of the more famous examples, some of which will be mentioned today. Sharks were first managed in the foreign fisheries in the 70s. They were thought of by most in the commercial sector as an unwanted bycatch or, at best, a development opportunity. Few were harvested through the mid 80s. The recreational catch of sharks has always been relatively small and, for the most part, did not comprise an even small portion of the

recreational catch. Then a fishery for shark began for export of the fins to the Far East. This demand literally jump started a fishery which really did not exist. Soon the resource was reported to be in trouble and the Councils called for a plan and emergency regulations. It took almost four years to develop the simplest regulatory system.

In the Gulf of Mexico, the red snapper fishery has been under regulation since the early 70s. During that time, the fishery has declined to its present state--not because there were not regulations in place, but because the plan and the regulations took forever to adjust for direct harvest and were virtually untouchable when snapper became a bycatch fishery in the shrimp fishery. The net result has been a significant decline in the snapper fishery in all but those place that substantially increased the number of artificial reefs thereby practically, if not actually, eliminating the bycatch through area closures.

In New England, there is no longer a recreational fishery for Codfish. In the 60s, New Englanders would catch codfish from the beach. Since we have regulated the fishery, the commercial groundfish fishery has been significantly decreased and the recreational fisheries all but eliminated.

The news from the West Coast is no better. Coastal salmon fisheries have seen further erosion since the implementation of the Magnuson Act. Although some mixed stock fisheries have done better, it is the existence of hatchery fish that supports the catch levels in the Northwest, not the sound management of the wild resource.

The news from Alaska is also getting to be a little bleak. Although the resource there is in better shape than anywhere else in the country, most of the elements for a disaster still exist. In the traditional coastal fisheries, there are way to many participants. In the newer fisheries, over-capitalization has become the buzz word as most scramble to get enough vessel days to meet debt service.

The cause of all of this decline is multifaceted, but at least part of it results from the structure of the management system. The Magnuson Act forces two entirely different thought processes to come together at once. The first is the longterm plan for the operation of the fishery. The second is the immediate need to regulate the users of the fishery to solve today's impending doom. These two concepts get decided by the same people concurrently. The establishment of longterm optimum yields, overfishing standards or rebuilding strategies get combined with the almost overwhelming pressure of the day, which usually is, who gets the fish and how many. No where is this dilemma more acute than in the establishment of some form of limited entry.



It is not surprising that limited entry systems start out as moratoriums on entry. The Council has the recognition that they need to do something about entry or their management problem will get worse. So they propose cutoff dates. Putting these dates into place usually requires a short term decision, namely who gets in and who stays out. Most Councils modify the cutoff dates with such ease that most companies investing in a fishery either disregard them or do not know about them at all. When a moratorium does go into place, it takes years for a decision to be made on how to allocate the resource between the users. The paralysis in the limited decision process is very similar to the paralysis in the management system. It is impossible to expect Councils to do both short term and long term thinking simultaneously.

The remedy is to separate the function of rule creation from planning. This has recently been referred to as frontloading the management system. Planning for the management of the fishery should be a longterm four to seven year exercise. As a document, it should include overall objectives, preferred management systems, optimum yields, clear definitions of overfishing, identification of allocation criteria, criteria to judge the effectiveness of the plan and a statement of how and under what circumstance it could be amended. A plan should always require an EIS and economic analysis. It should go through extensive Council and Secretarial review. When adopted, it will be the blueprint for the operation of the fishery. It could include listing areas of habitat critical to the achievement of the plan's objectives. It could incorporate the scientific needs of the fishery so that the agency could budget better. In essence, it would be the comprehensive document that would lay out to everyone how the fishery would be managed and toward what objectives. It would not include any proposed or recommended regulations.

Implementing the plan would be more the day-to-day job of the Council and the Secretary of Commerce. The concept here would include a modification of the present regulatory process. Under the existing system, a Council is allowed to recommend regulations when a plan or a plan amendment is under consideration by the Secretary of Commerce. The present system couples the two in such a way that it is difficult to get significant regulatory changes without a change in the plan. Under the bifurcated approach recommended here, the Councils would propose regulations that implemented the plan. The regulations would be published for a 45 day comment period in the Federal Register. The Council would include in the preamble the problem intended to be addressed, any alternatives it considered, a statement why the proposed regulation is consistent with the plan and the Magnuson Act and an assessment of the impact of the regulation on the fishery.

The Secretary would retain all of his present approval authority, including the ability to not accept the regulation if it was inconsistent with the plan or the Act. The Secretary would

also retain all of his emergency regulatory powers and the power to propose and adopt regulations where the appropriate Council has failed to do so.

The net result is that the Council becomes, in the first instance, a planning body with longterm planning responsibility. It can focus on the needs of the fishery over a longer period of time and provide some certainty to the participants in the fishery. Secondly, it places the Council in the role of implementing the plan by selecting and proposing the regulatory measures best suited to achieve the overall conservation objectives for the fishery. Lastly, it reduces the time and layers of review for a regulatory amendment. The NOAA/Commerce/OMB role in proposing the regulation is minimal and should not be significantly increased in the adoption phase.

#### Restoring the Credibility of the Council System.

There are a lot of reasons for the perception in the Congress and the Administration that the Council system is broken. Groups interested in either preserving or using the resource are often at odds with the decisions made by Management Councils. Not surprisingly, those groups come here to Congress or to the Administration to complain. The complaints tend to be along two common themes. The first is directed at the Council members. The aggrieved group is not represented on the Council and, for that reason alone, they did not get what they wanted. This line of reasoning seems to encompass the better balance requirements, better qualifications of Council members, and the need for conflict of interest requirements.

The other line is more structural. Councils do not have sufficient controls to eliminate the political and, therefore, arbitrary decisions. This raises the concerns for the need to apply the Federal Advisory Committee Act to Council meetings, greater definition of key terms in the statute, such as overfishing, and stricter application of the 602 guidelines giving the Councils less discretion.

Most of these ideas have been around for a decade. Many of them are already requirements in the statute or the "beefed up" 602 guidelines. So the thought occurs--why didn't it work? The reason is fairly clear. Most of the legislative and administrative fixes have been superficial and unenforceable. What is the value of a definition of overfishing if neither NOAA or the courts recognize a statutory requirement to prevent it? What is the value of an annual report on the balance of the Council when it does not recognize pure environmental or consumer interests? What is the value of requiring the disclosure of the members financial interest if the statute gives the member carte blanche to vote the interest?

Why should anyone expect that the 602 guidelines would have a significant effect on the operation of a Council, when they are not even binding on the authors of them at NOAA? Who would anticipate that the application of FACA would somehow reduce the Councils to advisory committees when the Executive Branch and the Congress have consistently deferred to the Councils as the policy making body in national marine fishery management? Lastly, how would you hold a Council accountable for a decision, when every court that looked at the issue has concluded that the Secretary, not the Councils, is accountable for federal fishery management?

There obviously are small exemptions to most of the underlying concern for each of these questions. However, the reason for these concerns is clear--the statute as presently configured gives the Councils all of the rope they need to hang themselves publicly, and sooner or later they do. The end effect is that users of the resource and the public at large lose confidence in the management system.

CCA proposes a simple set of solutions to restore confidence in the system. (1) The statute should be amended to provide clear delineated responsibility for the decisions made. Frontloading the regulatory system as suggested above will make the Council a clear part of the regulatory system. It will make the Councils accountable for their actions. (2) Eliminate the conflicts problem. The appointment criteria should include a requirement that if a nominee for appointment to a Council receives any compensation from any interest directly regulated by a Council other than their own business, they cannot be appointed. Secondly, any member of a Council who has a financial interest in a regulated fishery must recuse himself from the vote on the regulation. They may discuss it and they can continue to participate in the planning process, so long as they have fulfilled the present disclosure of financial interest requirement. Lastly, like all high ranking federal officials today, ex Council members should have a five year post membership ban on appearing before either the Council or the Department of Commerce. (3) Require the 602 guidelines to be mandatory on the Secretary of Commerce and the Councils. (4) Stop worrying about the balance issue. Neither the Congress or the Administration will ever be able to properly characterize every Council member into a recreational or commercial box. The requirements for membership should continue to be knowledge of the fish and fisheries management and a clear statement of conservation ethic.

#### Interjurisdictional Fisheries

This is an area that has received very little attention as a Magnuson Act issue. Rather, when a specific problem has occurred, like striped bass, an independent statute has been passed. This is a problem that could frustrate all the good this statute has ever done, as the most effective state and federal enforcement

tool, landing laws, are made virtually unenforceable. The issue of the federal role in state waters is a very complicated issue and requires a little history to put it in perspective.

Prior to the Magnuson Act, most coastal fisheries were managed on the basis that the citizens of various states were subject to the jurisdiction of the state in which they resided. For most fisheries, this was adequate, but there were fleets that could go well beyond state lines and travel thousands of miles to fish. This was especially true of the growing Alaskan fisheries, the Southeast shrimp fishery and the New England groundfish fishery.

Prior to the Magnuson Act, attempts at interstate management were inept. After World War II, coastal states formed Congressionally-approved interstate compacts to share information and to improve lateral management of joint stocks. These commissions, left without any real status or authority, were incapable of jointly managing stocks and became a sort of state uniform data collection center without any collective regulatory authority.

In the early 70s, a new, very lucrative, fishery in Alaska began to develop offshore for King Crab. This fishery, more than any other in the country, led to the revision of state jurisdiction which we have today. The State of Alaska, in an attempt to control the seasons and the fishermen fishing the Gulf of Alaska, tried to assert jurisdiction over the activities of Washington State citizens operating offshore of Alaska. Challenges to the State's authority to regulate offshore catcher/processors soon resulted. Alaskans argued that the King Crab was a creature of the continental shelf and that the United States had exercised jurisdiction under the Truman Proclamation. Alaska retained that jurisdiction because the population was contiguous to, and an integral part of, the State. King Crab stewardship became a responsibility of the state of Alaska.

It should not go unnoticed that the Senator from Washington at the time was Warren Magnuson and the Senator from Alaska was Ted Stevens. These two worked to fashion a solution that allowed for the states' involvement in the development of the regulations while, at the same time, allowed for the exploitation of multi-state fisheries without undue state interference. Two of the most lasting and significant parts of the Act resulted from this attempt to balance the interests of the states and the free movement of out-of-state fishermen. The first is Section 306 which attempted in relatively clear language to delineate the state's and hence the federal government's jurisdiction. The second was the Council system.

A state's ability to regulate fishermen directly and indirectly has been the subject of at least ten suits since the inception of the Act. In each one, the courts have attempted to

determine what was intended by the Congress through an analysis of the legislative history. The result is that today this issue is not defined and the extent of state jurisdiction to regulate its own resources and fishermen is very poorly understood. What was intended was a scheme of overlapping management authority that allowed out-of-state vessels to be treated on the same basis as in-state and allowed a collective body (the Councils) to work out the details. A fair reading of the legislative history leads to this conclusion, but when one applies this concept to actual management of a fishery, the extent of state jurisdiction, as interpreted by the courts, becomes unclear.

Only purely State water fisheries are beyond this confusion. States can manage fisheries in their own state unless they were preempted by the federal government for not cooperating in an adopted fishery management plan. This has never caused a problem. All the problems have occurred in those situations where the state has acted to manage the fishery outside its territorial sea through the use of landing laws. Landing laws have proven to be the most efficient method of regulating a fishery since they are easily traced to legislative history. The problem is that courts faced with difficult fact patterns and a complicated area of Constitutional law have twisted the original intent to produce a hodgepodge of results.

The original intent here was clear. Congress created the Fishery Management Council to work through the details. It vested in the Council the authority to plan the management of the entire fishery and then recommend to the states and the NMFS the method of implementation. Councils were created to plan how each fishery would be managed throughout its range and were composed of the necessary forces to do the job. That is why the membership includes state managers, selected by the governors of each member state, private citizens nominated by each state, a representative of the state compacts, and appropriate representatives from the federal government.

The solution here is not as clear as the problem. Congress needs to carefully define the effect of indirect regulation of state citizens participating in federal fisheries and violating federal regulations within the state. In addition, Congress needs to consider carefully the effect of a fishery management plan that, in order to be effective, needs to be implemented by more than just the federal government. Both of these problems should be addressed in any amendments proposed by the Committee. CCA would be happy to work with the committee to develop specific language.

## Conclusion

The Magnuson Act is the great federal experiment in participatory democracy. It is a system that works better than any before it or any that has been devised since. It is not without its warts. This Congress has a chance to reform this system, change the public's perception of it and improve the public's confidence in it. It is time for strong measures before the system fails.

Thank you for allowing us to testify here today.

TESTIMONY OF JOSEPH R. BLUM

ON BEHALF OF THE

AMERICAN FACTORY TRAWLER ASSOCIATION

BEFORE THE

HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

SUBCOMMITTEE ON FISHERIES MANAGEMENT

APRIL 21, 1993

Thank you, Mr. Chairman, I am Joe Blum, Executive Director of the American Factory Trawler Association (AFTA). AFTA is a trade association comprised of 18 member companies operating 44 factory trawlers and motherships, principally engaged in the groundfish fisheries in the Pacific Ocean.

AFTA appreciates the opportunity to testify today on reauthorization of the Magnuson Fishery Conservation and Management Act. We believe that the U.S.-flag at-sea processing fleet offers a unique perspective in evaluating the policies and process contained in the Act. The success of the U.S.-flag at-sea processing fleet in phasing out foreign fishing and processing within the U.S. 200-mile zone is the direct result of Congressional policies and goals explicitly stated in the Magnuson Act. At the same time, the viability of our industry sector has been threatened by an unstable regulatory environment created by regional fishery management councils.

To the extent that the Magnuson Act was enacted to "Americanize" the fishery resources within the U.S. Exclusive Economic Zone (EEZ), it has been successful. However, by any measure, the conservation objectives of the Act are not being met and the management system is not working. Congress should conduct a comprehensive evaluation of national fisheries policy to determine what changes in the Act will provide the same measure of success in conservation and management that exists in the "Americanization" process.



Achieving the Americanization Goal of the Magnuson Act.

In 1976, Congress enumerated seven reasons for enacting the Magnuson Act. One stated purpose was to encourage the development of fisheries, "including bottom fish off Alaska", by United States fishermen. Some U.S. fishermen responded to this provision by seeking "joint venture" arrangements with foreign-flag at-sea processors that dominated the North Pacific groundfish fishery. These joint ventures featured American catcher vessels delivering codends of fish "over the side" for processing onboard foreign-flag mothership vessels.

Congress made clear in 1978 that the Magnuson Act also intended to promote opportunities for U.S. processors in order to maximize the national benefits derived from fishery resources within the 200-mile zone. The Magnuson Act goal to encourage development of the bottomfish resource by U.S. fishermen was expanded to include the U.S. fishing industry. At the same time, Congress also approved the "processor preference" amendment, which reaffirmed that U.S. processors received the same priority over foreign processors vessels that U.S. fishermen enjoyed over foreign fishermen.

Congress provided tax incentives for vessel construction through the Capital Construction Fund (CCF) program and, as a pilot project, subsidized construction of the first two U.S.-flag factory trawlers, the *Seafreeze Atlantic* and the *Seafreeze Pacific*. In 1980, Congress implemented the "fish and chips" policy which helped open up foreign markets to U.S. fishery products.

With strong support and clear guidance from Congress, Washington State fishing companies invested almost \$1.0 billion during the 1980's in factory trawlers and motherships that operate in the Pacific groundfish fisheries. The Americanization process created over 10,000 jobs in the at-sea processing sector. By 1991, foreign fishermen and processors were phased out of the 2.0 million metric ton Bering Sea groundfish fishery and the Gulf of Alaska and Pacific Coast groundfish fisheries.

Consisting primarily of small businesses, the at-sea processing sector produces \$850.0 million in seafood products annually, including exports valued at \$500.0 million annually.

The Americanization success has been tempered by recent controversial regulatory actions developed by two of the eight regional fishery management councils. A series of actions approved by the North Pacific Fishery Management Council and the Pacific Fishery Management Council within the past eighteen months have reallocated more than half a billion pounds of fish away from the at-sea processing sector and reserved these resources for a handful of companies engaged in shoreside processing.

#### **Shoreside Preference Illustrates Management Failures Under the Act.**

The so-called "shoreside preference" allocation rule developed by the North Pacific Council best illustrates the flaws in the regional fishery management council system that Congress must remedy in the current reauthorization. The North Pacific Council is comprised of eleven voting members including one federal official and three state officials, one each from Alaska, Oregon and Washington. By law, five of the remaining seven voting members

are private citizens who are Alaska residents; the remaining two are residents of the State of Washington.

The shoreside preference scheme, in effect, banned at-sea processors from the Gulf of Alaska pollock and cod fisheries, set aside 200 million pounds of Bering Sea pollock traditionally caught by at-sea processors for disadvantaged Alaska communities, and allocated another 200 million pounds of at-sea processed Bering Sea pollock to three firms operating shoreside facilities. The principal beneficiaries of this latter shoreside preference allocation are the two Japanese fishing companies that control the Japanese pollock market into which most U.S. pollock production flows.

The council members voting to reallocate over 450 million pounds of fish included, 1) the council chairman, who is a lobbyist for the shoreside processors' trade association, 2) an individual with an ownership interest in shoreside processing facilities in the Gulf of Alaska, and 3) an operator of at-sea processing vessels whose vessels were defined in the rule as shoreside processing facilities.

Federal appointees to the Council voted to promote their own economic interests and to impose punitive regulations upon their competitors unencumbered by meaningful financial disclosure requirements, application of federal conflict of interest statutes, or administrative guidelines intended to prevent regulatory abuses. The absence of proportional representation of interests (as required by the Act) on the Council, and the fact that Alaska residents constitute a majority of voting members on the council

contributed to the Council's abuses in the development of the shoreside preference scheme.

AFTA was not alone in identifying the arbitrary and capricious actions of the Council. Virtually, every professional fishery manager in the National Marine Fisheries Service (NMFS), who reviewed the Council's plan, recommended disapproval of the Council's shoreside preference proposal. The Justice Department's Antitrust Division stated that the allocation fostered inefficiency and violated several other precepts of the Magnuson Act. The Commerce Department's Office of Inspector General found the Council's analysis to be inadequate and urged the Secretary to reject the allocation.

Regretably, the Secretary insisted only that the Council make some minor modifications to the shoreside preference rule, then rubberstamped the Council's proposal. AFTA is disappointed, not just with the outcome of this and other allocations recently recommended by regional fishery management councils, but with the absence of fairness and balance in the regulatory process. The same concerns were expressed when North Pacific Council members established a formula and apportioned shares of the halibut and sablefish resource among participants in the fishery.

I would be surprised if East Coast and Gulf of Mexico, commercial redfish and billfish fishermen cannot identify with the arbitrary nature of council allocation decisions imposed by competing user groups; both groups--unrepresented on councils--entirely lost access to their fisheries when competing users serving on the councils took action.

Conservation Failures Under the Magnuson Act.

With regard to conservation of U.S. fishery resources, the results to date are mixed, at best. Generally speaking, Americanization occurred overnight on the East Coast when the 200-mile zone was established in 1977; stocks overexploited before passage of the Act still have not rebounded. During that time, the councils have been given increased authority and funding, but their conservation efforts have been inadequate. Supporters of the council system can offer little evidence that conservation efforts on the whole are succeeding. Some argue that landings by commercial fishermen have increased substantially in recent years. This is a questionable success story since, according to NMFS, 40 percent of U.S. fish stocks are overutilized. Moreover, ten years ago, U.S. commercial fishery landings topped 6.4 billion pounds; in 1993, fishery landings will be approximately 9.5 billion pounds. Of that 9.5 billion pounds, however, pollock will account for about 3.0 billion pounds. In other words, take away the Americanization of just one fishery in the last ten years, and U.S. fishery production has not increased.

The North Pacific Council certainly deserves credit for conservative management of the groundfish fishery, though the success is partly an artifact of the Americanization process. It was far easier to manage the step-wise elimination of the foreign fleets operating in U.S. waters than it is to balance the legitimate, often, conflicting interests of domestic fishermen.

It took more than ten years to achieve Americanization in the North Pacific. We were fortunate to inherit healthy fish stocks that had been conservatively managed through strict quotas on

foreign fishermen. To ensure that the fruits of Americanization are not spoiled as has occurred in other regions and to allow overutilized stocks to realize their full potential, conservation measures should be placed in the hands of professional fishery managers.

**Returning Balance and Accountability to the Council System.**

In 1976, Congress granted the Secretary of Commerce the authority to manage fisheries out to the 200-mile limit. To ensure that affected regions and user groups had a voice in conservation and management decisions, eight regional fishery management councils were created to advise the Secretary on regulatory measures. The delicate balance between managing resources to derive the greatest benefit to the Nation, but with due consideration for regional views, has been consistently eroded through a series of Congressional amendments to the Act. AFTA believes Congress should restore the checks and balances eliminated over the years.

The Secretary has become increasingly deferential to the councils since the mid-1980's. In 1982, Congress expressly forbade the Secretary from substituting his judgment for that of the councils. The Secretary's authority is limited to only approving, disapproving, or partially disapproving council actions, if the proposed action is inconsistent with any of the seven National Standards contained in the Magnuson Act. The National Standards, which are vague and, at times, contradictory, are not useful tools for the Secretary to use in providing guidance to the councils. As a result, of the approximately 200 plans and plan

amendments submitted to the Secretary for approval, fewer than 20 have been disapproved in whole or in part.

In addition to restricting the Secretary's authority to substitute his judgment for the councils', Congress imposed strict time limits on Secretarial review. If Secretarial review is not completed within the allotted time period, the management measure automatically goes into effect. These limitations on Secretarial authority supplemented an original provision of the Act barring the Secretary from promulgating a limited access program for any fishery. The Commerce Department has identified limited access as a critical tool for dealing with the overcapitalization situation that exists in many U.S. fisheries, yet the Secretary is precluded from effectively dealing with this critical issue.

Authority and independence were increasingly the trademarks of the regional fishery management councils as the Secretarial oversight and policy making role was diminished. Council membership requirements changed as well while councils evolved from being advisory bodies to becoming decision makers. In a series of amendments to the Act in the 1980's, Congress decreed that council appointees be *participants* in the fisheries, not simply individuals who were knowledgeable about the fisheries under council jurisdiction.

Congress apparently intended that individuals with conflicts of interest should dominate the council membership, and that councils assume the decision making authority for fisheries management. The inherent problems with creating such a system are evident, but Congress compounded the situation by also removing

provisions of the Act setting ethics standards for and requiring accountability of council members.

In 1982, Congress exempted the councils from the Federal Advisory Committee Act (FACA), a statute which, among other things, sets financial disclosure requirements and ethics controls for federal advisory committee members and mandates that federal advisory committees have a "balanced membership." It is believed that only 20 advisory committees out of an estimated 1,000 active bodies are fully exempted from FACA. Congress went further in 1986 exempting council members from federal conflict of interest statutes. Financial disclosure requirements were placed in the Act in lieu of requiring adherence to conflict of interest laws. The financial disclosure forms filed by council members and kept on file at the councils' offices fail to illuminate the financial interests held by voting members of the councils.

Neither the fishery resources nor the fishing industry are well served by the continued abrogation of management authority to councils that have too much authority, but offer little accountability. With that thought in mind, we offer the following proposed changes to the Magnuson Act.

**AFTA's Proposed Changes to the Magnuson Act.**

**1. The councils should serve as advisory bodies to the Secretary; Congress erred in 1982 by prohibiting the Secretary from substituting his judgment for that of the councils.**

Two of the most vexing problems currently experienced with administration of the Act--unbalanced representation among user groups and conflicts of interest among council members--are less problematical, if unbiased professional fishery managers working



at NMFS at the regional level and in Silver Spring, MD have primary responsibility for developing management measures based on recommendations from the councils.

Congress has struggled to achieve "balanced" representation among user groups, but there simply are not enough voting seats on the councils to accomodate the diverse interests in the commercial fishing industry, much less the representatives of the recreational fishing industry, the environmental community, or consumers. Congress has done less well developing a system in which the viewpoints of user groups are represented without the corrupting influences of conflicts of interest. It is time for the pendulum to swing back to placing professional managers in charge of conserving and managing fishery resources.

Some have suggested reviving a Senate proposal considered in 1976 to establish a Fishery Management Review Board, an independent and impartial body to review actions by the Secretary. The Board members under the original proposal would be appointed by the President with the advise and consent of Congress and would not "engage in any other business, vocation or profession" while serving on the Board. This administrative review board with the authority to settle disputes arising out of management actions could help avoid much of the litigation spawned by current administration of the Act. AFTA urges the subcommittee to consider creation of an independent board to review the conservation and management actions proposed by the councils and the Secretary.

2. Require the Secretary (or councils), when preparing a fishery management plan or plan amendment, to adhere to the following three administrative procedures.

a. The Secretary (or councils) should be required to consider all reasonable alternatives when addressing a perceived management problem.

This proposed amendment places in the Act a regulatory standard contained in the National Environmental Policy Act (NEPA). This is the first of three proposed changes designed to bring accountability into the fisheries regulatory process. At the Fisheries Management Subcommittee's hearing on March 3, 1993, Representative Unsoeld read into the record portions of a transcript from a North Pacific Fishery Management Council meeting when two council members lamented that a management option was not analyzed because one of the other council members was seeking public office and that even analysis of the option, much less adoption of the option, would be politically unpopular.

It is unsettling that the current management system provides so much discretion to fishery management councils that they may exclude viable options from analysis based on whim or political expediency.

b. The Secretary (or councils) should be required to select the management alternative that is least burdensome to the industry, but which addresses a conservation or management concern when considering the range of options.

This proposed change to Section 303 of the Act simply requires the Secretary (or a council), when choosing among the options that ensure proper conservation and sound management, to choose the option that causes the least dislocation to participants in the

fishery. Currently, the Act requires the Secretary (or a council) to take measures "necessary and appropriate for the conservation and management of the fishery." Nothing in this proposed amendment diminishes either the Secretary's or the councils' responsibility to impose strict conservation measures, when necessary. The intent of the proposed change is to minimize the economic and social impacts of regulatory actions on participants in the fishery.

2. The Secretary (or councils) must choose the management alternative dictated by the weight of the evidence on the record. The Secretary (or councils) cannot simply adopt a measure based on the existence of some evidence on the record.

The thrust of this additional change to Section 303 is to depoliticize council actions and to emphasize reliance on scientific data. The Act provides for councils to receive input from scientific committees, industry advisory panels, and the public; however, nothing in the Act requires councils to base their decisions on this input. This proposed change will prevent arbitrary and capricious actions by the councils, and require council actions to conform to the facts and evidence presented.

3. Congress should address the root problem of overcapitalization in U.S. fisheries and promote solutions to wasteful fishing practices.

Overcapitalization is present in every region and in most fisheries, yet Congress has not given due consideration to solving one of the principal problems facing fishery managers. Congress should reconsider the Magnuson Act provision precluding the Secretary from designing limited access programs and other privatization options.

Overcapitalization in fisheries can result in councils being pressured to weigh social and economic factors more heavily than biological considerations in setting harvest levels, sacrificing conservative management. Also, overcapitalization in "open access" fisheries--where each vessel races to catch as much of the resource as possible before the quota is reached--can lead to wasteful fishing practices. For example, higher "bycatch" of non-target species can result if the incentives in the management system reward those who fish fastest rather than those who fish cleanest. Also, discards of odd-sized target species can occur, again, if the system rewards those fishing fastest, not cleanest. No matter what the particular circumstances are that occur in a fishery, it is simply inefficient to have more harvesting and processing capacity than is needed to prosecute a fishery.

Allocating quota shares among fishermen is one of the most common approaches to reversing overcapitalization. Since the Secretary is much more likely to be an "honest broker" than the conflict-riddled councils in apportioning shares among fishermen, removing the limits on Secretarial authority will more likely result in more equitable management actions. In any case, Congress should not limit opportunities to develop market driven solutions to fishery management problems.

With respect to the North Pacific fisheries, AFTA urges Congress to address the waste and bycatch issues largely resulting from the North Pacific Council's failure to "rationalize" the fisheries by replacing the open access system with a market-based management regime. Indeed, the Council has exacerbated the problems of waste and bycatch by imposing shoreside preference,

which simply created two open access fisheries--one for the shoreside sector and one for the at-sea processing component. Much of the waste that is a byproduct of the current management regime would have been eliminated, if the Council had acted four years ago to develop an individual transferable quota (ITQ) system for North Pacific groundfish, instead of disrupting market forces with implementation of shoreside preference.

In fact, NMFS is expected to report to the North Pacific Council this week that discards are extremely low in one portion of the fishery that operates under the same general principles as an ITQ system. Congress should also review federal rules that mandate waste. For example, trawlers are **prohibited** from retaining halibut, and other incidentally harvested species. There are market-based solutions to allow vessels to keep incidental catches of non-target species. Congress should insist that these management alternatives be explored.

Thank you, Mr. Chairman, that concludes my testimony. I am pleased to answer any questions that you or any other members of the Subcommittee might have.

Organized 1870 to Promote the Conservation, Development and Wise Utilization of the Fisheries



*American Fisheries Society*

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**Testimony of Paul Brouha**

**Executive Director**

**American Fisheries Society**

**Regarding H.R. 780, legislation to reauthorize the  
Magnuson Fishery Conservation and Management Act**

**Presented to the House Merchant Marine and Fisheries  
Subcommittee on Fisheries Management**

**April 21, 1993**

## American Fisheries Society Position on Reauthorization of the Magnuson Act

Chairman Manton and members of the Subcommittee, the American Fisheries Society (AFS) appreciates your invitation to testify concerning our views on whether the Magnuson Act is ensuring long-term conservation of our fishery resources and to provide our suggestions for legislative changes to improve the functioning of the Act.

The American Fisheries Society is an international organization of more than 9200 fisheries and aquatic science professionals and student members. Chartered in 1870, AFS is the world's oldest and largest scientific body dedicated to the advancement of fisheries science and the conservation of renewable aquatic resources.

### Overview of issues for Magnuson Act reauthorization

The Magnuson Act has been successful in eliminating foreign fishing in waters of the United States and in establishing a domestic fishing fleet since its inception. It has not been successful in establishing institutions and processes to foster responsive, rational management or conservation of our fishery resources.

While our testimony addresses an extensive list of issues, members of our Marine Fisheries Section, Committee on Reauthorization of the Magnuson Act felt five of those elaborated below constituted the highest priority on which AFS should concentrate its efforts. They are presented in no particular order:

- \* End unlimited access to commercial and recreational fisheries, except for special cases (Issue #8a).
- \* Separate decisions affecting allocation from decisions affecting conservation (Issue #7), assigning the allocation role to the councils and the conservation role to the Secretary of Commerce (Issue #6).
- \* Promote risk-averse decision-making (Issue #9).
- \* Collect user fees (Issue #8b).
- \* Require by law the conformance with 50 CFR 602 guidelines on definitions of overfishing (Issue #10).

Our extended discussion of issues is ordered around three topics--improving the trusteeship role of the regional fishery management councils, strengthening the federal leadership role for long-term stewardship of the public's marine resources, and improving the processes of fishery management plan development and implementation.

#### Improve the Trusteeship Role of the Regional Fishery Management Councils

1. Conflict of Interest *The Act should prescribe that council members shall be trustees of the public's resources and not act as representatives of special user groups, that no member shall vote on any issue with which they have any immediate or recurring financial conflict of interest or if they are a current or past employee or paid representative of a user group association that may potentially be affected by the issue.*

In 1989, AFS recommended that no member shall serve on the council if they have a conflict of interest. The consensus among Committee members is that conflict of interest is a serious issue, but it may be too naive to think that Congress will remove user groups from the council process. However, conflict of interest still remains a problem, real or perceived. The recommendation represents a compromise of positions offered by Committee members.

An argument raised against this recommendation is that current provisions of MFCMA, at §302(b)(2) *et seq.* and 302(k), together with the regulations at 50 CFR 601.31 *et seq.*, are both recent, stringent, and comprehensive. A review of these sections demonstrates that a council member can be both a trustee of the public resource and, at the same time, have a financial interest in a fishery or user group.

2. Fisheries Expertise *Replace the requirement that all members be knowledgeable about fisheries with the requirement that at least three voting members of each council are selected for fisheries expertise and unaligned commitment to public service, as demonstrated by university or other non-user group affiliation and by past actions and accomplishments.*

The Committee feels it is not necessary to have every nominee to the council be knowledgeable about fisheries. It is commonplace for boards of directors and related analogous bodies to have a mix of members with direct ties to the organization involved, as well as members (usually professionals) selected to represent the community at large. It is likely that non-fisheries professionals will be less biased when it comes to interpreting and representing the views of disparate fishing groups, as well as the government and general public. The presence of at least three members who are

knowledgeable about fisheries, but who are not aligned with a special interest group, would add further objectivity to the voting process. In this regard, nominations should be sought by the Secretary from academic institutions and other non-user group elements of the private sector.

Arguments against this recommendation are that it appears to put a quota system on council membership, that non-aligned experts have been appointed to the councils in the past, and the scientific and statistical committees that serve each council possess such expertise.

**3. Voting Membership** *Expand the voting membership on each council to include the US Fish and Wildlife Service.*

Committee members feel that the US Fish and Wildlife Service should have stronger and more active representation on the councils. Some members also expressed the opinion that the marine fisheries commissions should also be elevated to voting status. Several members argued against giving voting membership to the marine fisheries commissions, since it could make the position of the commissions untenable. Given that council issues often involve strong divisions among the states' views, a commission vote on one side of such an issue could be perceived as an action against the opposing state position. Another suggestion is to give the commissions voting status, and give the state representatives non-voting status.

**4. Reappointment of Voting Members** *An incumbent voting member of a council shall automatically become a nominee for the Secretary's consideration for a second term.*

The recommendation is intended to insulate a member from the control of the governor so that member would not have to worry about being re-nominated if he/she votes against the governor's wishes. The member would still have to compete with other nominees for re-appointment to the council, but the Secretary would retain the option of incumbent re-appointment on the basis of demonstrated merit and service to the council. New council members rarely reach their peak in effectiveness in their first term because of the complexity of issues that are addressed.

Arguments raised against this recommendation are that the Secretary would then have the appearance of controlling council votes, and that the issue is not widespread enough to be worth considering.

**Strengthen the Federal Leadership Role for Long-term Stewardship of the Public's Marine Resources**

**5. National Oversight** *An independent national board or commission should be established to oversee the Department of Commerce's implementation of the Act.*

This was a recommendation made by AFS in 1989, and in several other forums dating back to the original Stratton Report, that is still supported by the Committee members. Members of the board should be presidential appointments, be subject to Senate confirmation, be highly knowledgeable about marine fishery science and management, and must have no financial ties to the uses or users of marine fishery resources.

If the Subcommittee wishes to move ahead with this recommendation AFS is available to provide more specific details about the roles and duties of the board, and to whom the board would report.

**6. Leadership by the Secretary** *The Act should clearly establish the policy that the Secretary of Commerce must provide leadership in the fishery management process established in the Act and, through the National Marine Fisheries Service, exercise better stewardship for the long term benefit of the public's marine fishery resources.*

This was AFS's #1 recommendation in 1989. A more specific recommendation is to change Paragraph 2(b)(5) in the Act from "... to establish Regional Fishery Management Councils to exercise sound judgement in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans..." to "... establish Regional Fishery Management Councils to act as trustees of the fisheries within their area of authority, and to work in concert with the Secretary in his/her role as steward of the nation's fishery resources, to exercise sound judgement ..." Perhaps the recommendation is best implemented through the following three recommendations (#s 7-9). Whatever wording is used should be very closely crafted so as not to insert another level of bureaucratic involvement in the council process.

The Act should also require all fishery management plans (FMPs) to contain measures that will minimize wasteful by-catch; such measures may include prohibition of certain gear types or a requirement that the gear be modified to reduce by-catch to a predetermined level within a predetermined time frame. Elimination of wasteful and destructive fishing practices should be adopted as a national policy.

An argument against this recommendation is that it has already been satisfied, at least in part, by the preparation of the *Strategic Plan of the National Marine Fisheries Service*. The policy to eliminate wasteful and destructive fishing practice is already implied in §2(c)(3) of the Act, and the authority to restrict gear, area, time, and quantities of catch are all authorized in §303(b).

**7. Allocation** *decisions should be conducted separately from conservation decisions to the greatest extent possible.*

This was another recommendation made by AFS in 1989 and has been an issue since 1984. We also re-emphasize the need for divorcing the specification of the total allowable catch (TAC) from the allocation (the new 602 regulations have helped). A frequent reaction from the councils, when faced with a recommended TAC below their "comfort" level, has been to extend the time frame for



rebuilding as stock to allow for higher short-term levels of harvest.

**8. Limited Access** *The Act should establish the principle that commercial access to all U.S. fisheries shall be limited and recreational effort shall be controlled, and should require that all FMPs specify allocation among commercial, recreational, and other resource user sectors. The Secretary should be permitted to collect user fees to help defray the costs of managing fisheries, particularly in the case of limited access fisheries.*

This is a revision of a 1989 recommendation of AFS that is worded more strongly. Currently, limited access is one of several management options offered for consideration in the Act (§303(b)). However, limited access is an essential prerequisite to rebuild depleted stocks and to ensure that healthy stocks do not become overfished. Although it may not be appropriate for all fisheries, limited access should still be a guiding principle. This recommendation still accommodates designation of a fishery as exclusively commercial or recreational as an allocation option.

Management costs include costs associated with administration of the program, data collection, research, monitoring, and enforcement. Similarly, the Secretary should be allowed to establish and collect fees for observer programs. The Act should also be amended to allow for the recovery of a portion of resource rents generated when property rights are established under controlled access regimes. Resource rents could, at a minimum, be used to support management and administrative costs so that other fiscal resources do not have to be tapped for paying for management of a privatized resource.

In arguing against this recommendation, it was noted that the Magnuson Act, in §303(b), provides a wide variety of management options for council consideration. Within these options, allocations of product, time, and area may be made without the formality of a limited entry system.

**9. Risk-averse Decisionmaking** *The Act should promote risk-averse practices of fishery management by specifying that management decisions must err on the side of caution when there is uncertainty about stock measures.*

This is essentially a re-write of 1989 recommendation #9: *The Act should prescribe managing to obtain larger existing fish stocks in the presence of uncertainty about the stock's status or the efficacy of management rather than larger short-term catches.* There has been a tendency in the U.S. and elsewhere to use uncertainty to argue in favor of larger allowable catches. It may be possible to include wording in the National Standards, or to require the Secretary to produce guidelines (similar to the 602 guidelines for overfishing) that guide the councils on how to deal with uncertainty (and could also be expanded to deal with requirements for stock rebuilding plans).

**10. Overfishing** *The established convention should serve as the definition of overfishing, with an exception for interspecies or inter-stock dependencies, and that overfishing be defined in the Act with stringent requirements for demonstrating the interspecies or inter-stock exception, that overfishing be proscribed, that recovery from overfishing be required, and that the Act contain a fish stock threshold below which all fishing shall cease until a recovery to above that level occurs.*

This is the same recommendation made by AFS in 1989. The substance of this recommendation has largely been achieved by the 1989 602 guidelines, but a straightforward modification of the guidelines should be incorporated directly into §3 of the Act. The Act should require that overfishing be defined in an objective and measurable fashion, and that once stocks are deemed to be overfished, a recovery plan must be implemented as quickly as possible. If an acceptable recovery plan is not developed within a yet-to-be-specified time period, the Secretary should be empowered to intervene and prepare an appropriate FMP or FMP amendment. Consideration should also be given to empowering the Secretary to prohibit all fishing on a stock if fishing mortality on that stock remains above a level specified in an FMP or FMP amendment for more than a pre-specified period of time. Conformance with the 50 CFR 602 guidelines on overfishing definitions should be required by law.

A negative comment on this recommendation is that developing a specific definition of overfishing for inclusion in the Act may be virtually impossible.

**11. NMFS Budget** *The NMFS budget should be augmented to provide adequate funding for data collection, research, monitoring, enforcement, and administration.*

This need is becoming increasingly more pressing as more and more fisheries are recognized as being overfished, and progressively more fisheries are being brought under limited access. Perhaps a Trust Fund could be established with revenues from an excise tax on the landed value of all domestic, imported, and recreational fish and fish products, or from resource rents.

#### **Improve the Processes of Fishery Management Plan Development and Implementation**

**12. Secretarial Review** *The Secretarial review of management plans shall be confined to the administrative record and documents developed by the council.*

This action is needed to halt the present practice of user groups gaining a hearing with the Secretary for unilateral lobbying, thereby defeating the public debate process of the council forum, and unfairly prolonging the entire review and approval process with every opportunity for politicized second-guessing. This puts administrative review on the same footing as judicial review and should help the decision-making process when it is subjected to a legal challenge. The action also allows councils to submit more up-to-date stock assessments to the Secretary following the public debate process if the council deems that the scientific information contained in the assessments is the best available.

An alternative suggestion is to place primary responsibility for substantive operational and structural acceptability of a management plan or amendment with the NMFS Regional Director. Final administrative approval by the Assistant Administrator for Fisheries and Secretary would then be purely administrative and limited.

Also recommended is endorsement of the plan development team approach, as a means for the agency and council to arrive at agreements on issues early in the plan development process. Many of the current problems for some councils arise from the fact that NMFS personnel observe the council process of plan development and withhold comments until after the draft plan has been submitted for review.

**13. Time Limits for Council and Secretarial Actions** *All council actions, including the process of plan and regulation development and revision, notice actions, and regulatory actions, should be subject to time limits currently in place for review of plans and plan amendments. Also, an additional 180 days should be allowed for the Secretary to take emergency action.*

This is a modification of a more general recommendation made by AFS in 1989. Some Committee members considered the 1989 statement too vague, although all agree that time limits on council actions should be imposed. Sub-paragraph §305(C)(3)(b) allows the Secretary to take emergency action limited to 90 days, with one 90-day extension. In practice, this time limitation has been found too restrictive in some cases. The language should be amended to allow an additional 180 days.

**14. Coordination with Other Acts** *Substantive requirements of Acts other than MFCMA that are necessary for fishery management plans, amendments, and regulatory measures should be incorporated into MFCMA to assure compliance with their intent, or the analysis and impact statements required by the other Acts should be conducted within the MFCMA timelines.*

This is a modification of a recommendation made by AFS in 1989. Cost-effective fisheries management is currently hampered by the need for management actions to comply with redundant requirements of several applicable Acts in addition to MFCMA. These Acts include the National Environmental Policy Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Regulatory Flexibility Act, the Administrative Procedures Act, and Executive Order 12291. Requirements of the other Acts frequently impinge upon or overlap MFCMA requirements, including hearings, public comment, and inter-agency consultations. Overlapping requirements delay and unduly complicate the management process, add to the burden of NMFS and council staff, and at times prevent completion of actions within the required time frame without contributing additional benefits to the public or decision process. These requirements often preclude the needed flexibility to adjust regulations to rapidly-changing conditions of the resources or fisheries.

**15. Review of Effectiveness** *The Act should require a review of effectiveness of the current council/NMFS system before the next reauthorization.*

The new reauthorization (in 1996) will mark the 20th anniversary of the Act. This is probably as good a time as any to have a review of its underlying premises and evaluate its effectiveness. The review should focus on an evaluation of the interrelated roles of the councils, advisory panels, the Secretary, NMFS, and interstate commissions and compacts, and should make recommendations for improving the functioning of the system by reassigning, clarifying, or modifying roles, as necessary. The review should also include requirements for FMPs and their amendments for the purpose of recommending ways in which the process of FMP development can be more streamlined and timely. The review panel should consider the management structure in place in other fishing nations to determine whether some elements of those structures can be adapted to enhance the U.S. system.

An argument against this recommendation is that it appears to be pre-judging the council system. In 1984-85 the then Assistant Administrator for Fisheries appointed a blue ribbon panel to do many of the tasks proposed under this recommendation.

**16. State vs Federal Regulations** *The scope of federal management should be adjusted so that federal regulations do not take precedence over a state's if the state's are more stringent biologically and so that it provides for state authority over all U.S.-registered vessels adjacent to but beyond the 3 (or 9) nautical mile territorial sea for those stocks not subject to federal management. Furthermore, the governor of a state should be required to obtain approval of the appropriate council before issuing a permit for internal waters processing by a foreign flag vessel.*

This is a shorter version of 1989 recommendation #17 (parts c and d). Parts a and b of the original recommendation could be better accommodated through a mechanism similar to the Striped Bass Act. A comprehensive, generic interstate fisheries act to cover all interstate marine stocks could be an effective companion to MFCMA to accomplish needed conservation throughout the range of each stock. A recent decision by the U.S. 11th Circuit Court of Appeals has called into question the authority of states to apply their regulations outside of territorial waters for species not included in a federal plan. The Court also questioned the legality of cooperative state/federal measures even if mandated in a council plan. We might be forced to develop MFCMA plans for all animals occurring in both federal and state waters regardless of their predominance in state waters.

In its present form, §306(c) of the Act requires a governor of a state to consult with a council before issuing a permit for internal waters processing to a foreign flag vessel. However, instances have arisen where this requirement has adversely affected a council's fishery management strategies. When an independent contractor, representing a foreign fishing company or flag, obtains a permit from a state, the long-term council plan is defeated and the domestic industry's foreign markets are disrupted. While the result of the arrangement might be profitable to a handful of operators working from one or more ports in a single state, the government-subsidized foreign entity is in a position to offer its processed product off shore, in direct competition with U.S. shore side product, and at a

cheaper price.

17. Highly Migratory Species *Allow council-generated measures to be more restrictive than those included in international fishing agreements for highly migratory species.*

The 1990 amendments to the Act restrict U.S. decision-making on highly migratory species to total compliance with international recommendations, which may or may not be more restrictive than a council plan. To be consistent with the recommendation for risk-averse decision-making, the Act should be amended to allow council recommendations for management measures that are more restrictive than measures agreed-upon by the U.S. through international agreements.

Mr. Chairman and members of the Subcommittee that concludes our testimony today. I would note that we may refine these positions and develop discussion on additional issues as the reauthorization debate continues. We are eager to work with the Subcommittee to ensure fisheries conservation, development, and wise use through the Magnuson Act.

SUGGESTED RESPONSES TO QUESTIONS FROM THE  
HOUSE SUBCOMMITTEE ON FISHERIES MANAGEMENT

1. Some suggest that the councils do not act until a fishery has already been overfished. How serious a problem do we have with recognizing a need for an FMP before a crisis develops?

With limited funding and human resources, crises receive the highest priority. In order to be anticipatory, it is probably necessary to increase funding and staffing levels for fisheries management activities.

2. An emerging theme seems to be that we need to replace the ad hoc, species-specific management approach with one that looks at the entire ecosystem. What are your views on this? Should long-term planning be vested in some organ other than the councils?

It is obviously best to look at the ecosystem as a whole. However, AFS has not developed a position on ecosystem management because we believe that any real or perceived lack of an ecosystem perspective has not been the primary cause of the current problems facing U.S. fisheries. Overfishing, overcapitalization, and habitat degradation have not been caused by "ad hoc, species-specific management". AFS has no consensus view on who should be responsible for long-term planning.

3. Some argue that nothing is inherently wrong with MFCMA, and that the problem is more implementation. Do you agree or disagree, and why? If you agree, what should Congress do to improve implementation -- additional oversight, adding provisions for citizen suit procedures to MFCMA, or something else?

It is probably true that implementation of the Act is a greater problem than its actual substance. However, there are some sections that require amendment and others that could benefit by being strengthened (see the enclosed AFS Views on Reauthorization). Rather than Congress providing additional oversight, it may be more beneficial for the Secretary (after consultation with appropriate parties) to provide further guidelines on the interpretation of the National Standards and the goals of fisheries management. For example, the Secretary could provide guidelines on permissible definitions of "optimum yield," as used in National Standard 1, and elaborate on the requirements for rebuilding plans mentioned but not detailed in the 602 guidelines.

4. What changes in the Magnuson Act, if any, might you suggest to ensure that the consumer is guaranteed a plentiful supply of safe, wholesome seafood?

AFS has developed views on nine specific issues related to the plentiful supply of seafood (#s 1, 2, 4, 5, 6, 7, 8, 12 and 16 in AFS Views on Reauthorization). AFS has not developed a consensus view on seafood quality and safety.

5. It has been suggested that if an FMP leads to displacement of historic participants, then the federal government should provide some adjustment assistance for those displaced persons. How do we define "historic participants" and what kind of assistance might be appropriate?

AFS has not developed a consensus view on this issue.

6. Is it reasonable to say that those who profit from the reduction in overcapacity (i.e., those remaining in the industry) should pay the cost of compensating those driven from the fisheries?

In effect, this is what would happen in a tradable catch share system where initial allocations are based on catch histories or other forms of historical participation (e.g., the way that individual transferable quota systems are often formulated). Those remaining in the fisheries

(presumably the more profitable entities) would buy out the shares of those wishing to leave (including marginal operators). AFS has not developed a consensus view on the workability or need for an industry-funded buy out in any other situation.

7. How do you perceive the balance of power between fishery management councils and the Secretary of Commerce/NMFS? Should the Secretary of Commerce exercise greater authority over the councils?

The Act should clearly establish the policy that the Secretary of Commerce must provide leadership in the fishery management process established in the Act and, through the National Marine Fisheries Service, exercise better stewardship for the long term benefit of the public's marine fishery resources (see AFS Views on Reauthorization #7).

8. Should the selection process for new members of fishery management councils be modified to ensure a more fair and balanced council membership?

The requirement that all council members possess fisheries expertise should be removed from the Act and replaced with a requirement that three voting members of each council have no affiliation with a user group or state or federal resource agency. At least one of these members should be selected for fisheries expertise, and all three should have demonstrated unaligned commitment to public service, by university or other non-user group affiliation and by past actions and accomplishments.(see AFS Views on Reauthorization #10).

9. It has been suggested that the council member from the regional NMFS office should be a non-voting member of a council and that the regional Fish and Wildlife Service representative should be given a vote. What are the merits, if any, of this proposal?

AFS has not developed a consensus view on this issue.

10. The National Marine Fisheries Service has suggested that each State Governor should be required to nominate six rather than "at least three" nominees. How would you feel about this change?

AFS has not developed a consensus view on this issue.

11. We have heard a good number of complaints about conflicts-of-interest among Council members. Please comment on the seriousness of the problem.

Conflict of interest among council members is a serious issue and remains a problem, real or perceived. AFS recommends that the Act be amended to require council members to abstain from voting on any issue with which they have any immediate or recurring financial conflict of interest or if they are a current employee or paid representative of a user group association that may potentially be directly affected by the issue (see AFS Views on Reauthorization #9).

12. Joe Blum has testified about the council exemption from the Federal Advisory Committee Act and conflict of interest laws. Should these exemptions be continued? Why?

AFS has not developed a consensus view on this issue.

13. Is NMFS pursuing research to find more accurate, reliable, and cost-effective ways to estimate fish population levels?

Yes, this has been a major part of NMFS research efforts for decades. NMFS uses state-of-the-art survey techniques and fish stock assessment models, and is at the forefront in the continued development of these technologies. The question should be addressed directly to NMFS if specific details on funding amounts, etc., are required.

14. Do councils generally have adequate data to ensure fishery management plans have a scientifically sound basis? Do councils take full advantage of this situation?

The amount of information varies considerably from region to region and fishery to fishery. For example, in Alaska there are only two of a total of 35 managed stocks with unknown status, whereas in the Southeast U.S. the status of 43 of 80 managed stocks is unknown (ref. "Our Living Oceans: Report on the Status of U.S. Living Marine Resources 1992"). The extent to which scientific information is used also varies from council to council, but the situation has improved considerably since the 602 guidelines went into effect.

15. How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?

They may contribute primarily by providing more timely, accurate, and detailed information on catches, by-catches, landings, and fishing effort. Accurate and complete information on catch and effort is an essential prerequisite for credible stock assessments.

16. During the election, we heard a great deal about a new commitment to protecting natural resources. Does the President's budget provide sufficient funding for NMFS to perform its mission?

AFS believes that the FY 1994 budget proposed for NMFS, the first Clinton budget, is a step in the right direction. However, as discussed in the attached letter to Senator Hollings, it falls short of meeting the agency's funding needs.

17. Please assess the willingness of fishery resource users in your region to bear a larger share of the costs of federal fishery management efforts. What alternatives are perceived as the least burdensome by resource users?

AFS has not surveyed resource users about this issue. However, the AFS Ad Hoc Committee on MFCMA Reauthorization believes that, in most fisheries, it is probably unlikely that fishery users would be willing to share costs until and unless the fisheries become more profitable.

18. If additional revenues for marine fisheries conservation and management are necessary and Congress decides that users should bear some of the cost, how should those costs be allocated among interested parties?

There are numerous options, including license fees, landings taxes based on volume or value, fees based on the value of the fishing right, and resource royalties. AFS believes that MFCMA should be amended to allow the Secretary to collect user fees (see AFS Views on Reauthorization #3), but does not have a consensus view on how these fees should be allocated. Options for allocation of fees should be explored with the resource users and other interested parties.

19. Do councils need more authority to protect habitat on behalf of fishery resources? How might this be accomplished?

Habitat conservation should be the eighth National Standard in MFCMA. The councils and NMFS are in the best position to identify important habitat for living marine resources and to evaluate human activities that may negatively affect fisheries stocks that depend on those habitats for survival, growth and reproduction. The Secretary should be given authority to modify, restrict, or prohibit activities that may adversely affect habitats deemed essential by the councils and NMFS (see AFS Views on Reauthorization #12).

20. The 1990 MFCMA amendments removed highly migratory species management from council jurisdiction and gave NMFS authority to manage these species. How do you believe these species should be managed under MFCMA?

AFS does not believe that any change is required to the current division of authority to manage highly migratory species. However, AFS believes that the MFCMA should be amended to allow the Secretary to generate management measures that are more restrictive than those included in international fishing agreements for highly migratory species (see AFS Views on Reauthorization #16).

21. In terms of interjurisdictional fisheries, do you see a need for more cooperative sharing of fisheries management responsibilities among coastal states? Should states be given a larger cooperative role? Do the councils and the Secretary of Commerce/NMFS need more authority to encourage state compliance with federal fishery management plans?

In terms of interjurisdictional fisheries, there is a need to develop more cooperative management programs among the coastal states. These programs, however, should be regional in nature. On the east coast, a forcing mechanism for implementation of interstate fishery management plans should be established, similar to that already established for striped bass. A step in this direction is The Atlantic Coast Fisheries Cooperative Management Act (H.R. 2134), which has already passed the Merchant Marine and Fisheries Committee; Senator Hollings has a companion bill going through the Senate (S. 1126). Gulf of Mexico and west coast interjurisdictional programs should be strengthened through supporting recommendations of the regional interstate marine fisheries commissions for these areas. In the absence of federal law, state regulations should apply to their citizens throughout all federal waters. Also, in the absence of a federal plan, state regulations should apply throughout the adjacent federal waters. When fisheries are predominately in federal waters, the Secretary of Commerce has adequate authority to pre-empt state regulations. This authority has rarely been used. The Secretary should be strongly urged to use it whenever there is a threat to the conservation of fisheries resources.

STATEMENT OF MICHAEL NUSSMAN  
FOR  
AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION  
ON  
THE REAUTHORIZATION OF THE MAGNUSON FISHERY  
CONSERVATION AND MANAGEMENT ACT OF 1976

Presented to  
Subcommittee on Fisheries Management  
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Good morning. My name is Mike Nussman and I am Vice President of Government Affairs for the American Fishing Tackle Manufacturers Association ("AFTMA"). On behalf of AFTMA, I want to thank you, Mr. Chairman, for the opportunity to come before the Committee and share our views on H.R. 780, legislation to reauthorize the Magnuson Fishery Conservation and Management Act.

AFTMA represents over 500 fishing tackle and related industry manufacturers that are dependent on a healthy fishery resource as a vital component of their business. Although fresh water fisheries are the largest single part of the industry, marine fisheries have become increasingly important. While our organization is comprised of small to medium-sized manufacturing firms, we are, for obvious reasons, closely tied to the millions of Americans who enjoy sport fishing. But, I need to point out that we differ from those anglers...sport fishing is no hobby to us...it's our livelihood. It's jobs throughout the United States.

The theme of my testimony today is quite simple -- we believe that maintaining a healthy, productive marine environment is good business for the Nation. Tackle manufacturers believe that two factors are keys to their continued success. First, they believe they have to expose non-fishermen, particularly youngsters, to the fun of fishing. They attempt to do this in a variety of ways. Some are quite traditional like advertising, while others are more innovative such as urban fishing programs, or drug education programs like "Hooked on Fishing, Not on Drugs."

Manufacturers believe the second key to their long-term success is ensuring that there is an abundance of fish available to anglers. This is why AFTMA has a strong interest in the Magnuson Act. Seventeen years after the Act's enactment, 65 species of marine fish are overfished. And according to the Department of Commerce, our marine fisheries as a whole are producing far below their potential.

Today, we have an opportunity to establish a national marine conservation program for our Nation. Such a program would provide a decision-making process to enhance the long-term viability of the economical interests that rely on marine resources. The scope of the problem we face is relatively straightforward. More people, higher seafood consumption and more sophisticated harvest technology all spell trouble for fishery managers and users.

Demographers predict that population shifts could result in as much as 80% of the population living within 100 miles of the coast of the United States. This shift in population brings with it an increase in pollution and congestion that affects fisheries habitat, but it also increases stress on coastal fisheries as more people with greater access participate in marine recreational fishing. At the same time, there will be increases in the consumption of fish and price inflation. These increases will attract more effort from the commercial industry to supply a broader spectrum of species to the marketplace. A tremendous increase in the efficiency of gear through the use of electronics, and gear configuration has put substantial pressure on the resource.

History suggests that we are not prepared to address this challenge. Unfortunately, the basic philosophy characterizing much of the management of marine resource has allowed for over exploitation of many fisheries. Let me reference a recent article from the journal *Science* (April 2, 1993) which is attached to my testimony. In this article, the authors maintain that "our lack of understanding and inability to predict mandate a much more cautious approach to resource exploitation than is the norm." They reference a number of examples where natural resources (marine fisheries and otherwise) are over-exploited, often to the point of collapse.

Unfortunately, examples of such overharvesting are all too abundant. Let us look at the shrimp fishery. We have long been told that there is no need to limit the growth and harvest of the shrimp fishery since management limitations will have little or no effect on next year's abundance in the fishery. Although this is probably correct for shrimp, we are now recognizing the significant impact that the shrimp trawl bycatch is having on other resources, notably red snapper.

The problem faced by the fishery manager today is relatively straightforward. Fishermen, both recreational and commercial, argue that the resource is available to them as a public resource. Limitations on access are typically initiated after there is clear evidence that the fishery is being overharvested. The evidence of overharvesting is usually a decline in the catch per unit of effort, or the complete collapse of the fishery. The net result is that, although the fishery manager thinks the resource should be protected, he faces tremendous political pressure to keep allowing users to take one more fish.

We have seen this philosophy in a number of fisheries, all with disastrous results. The Redfish case is most famous, but there are a number of others. For example, five years ago the Gulf and South Atlantic Councils attempted to limit the swordfish fishery off the East Coast. The proposed measures were rejected by the Department of Commerce in part because of the lack of scientific certainty of the effect of the measures. This resulted in the near collapse of the fishery only two years later.

The mackerel fishery in the Gulf and South Atlantic has experienced the same type of problem. The first Council plan for king mackerel established an Optimum Yield so high that recreational and commercial fishermen could not catch it. Soon after, the South Atlantic Council had to place a moratorium on harvesting king mackerel. The same thing happened to Spanish mackerel. Both king and Spanish mackerel populations have rebounded, but I am afraid that soon weakfish, summer flounder and bluefish will follow down their path.

The most commonly recommended solution to this problem has been to collect more data to enhance the scientific capabilities of the institutions using the data; however, this will require significant increases in funds and personnel. Such increases are unrealistic and, therefore, are not a reasonable solution. Besides, money alone will not cover all of the fisheries, partially because of the way fisheries data is collected. The most efficient and least costly practice is to collect data through an active commercial fishery. This works for the large commercial fisheries, but many of the coastal fisheries are small and quickly exploited. By the time the government can respond to the commercial pressure on a species in a small fishery, it has been over-exploited.

So what can the Congress do to address the dilemma of too few fish for too many sophisticated fishermen? AFTMA has a number of recommendations. First, Congress needs to establish in this statute a clear conservation objective for the nation. We should now admit what every participant in the fishery already knows--fishing is a highly regulated activity. If conservation is the primary goal of the Act, then Congress should adopt amendments that promote conservation. Congress should require that new harvest technology should be tested before it is authorized. Congress should require that fishery management plans ought to specify authorized harvest technologies, especially in stressed fisheries, rather than listing existing technologies not allowed. Where science is inadequate to manage, Congress ought to ensure that the limits set for harvest are conservative. For those fisheries that require international cooperation, Congress should require our negotiators to use the same principles. Congress

should adopt a clear statement of conservation so that all users of the resource can benefit from it.

**Second,** we must begin to address the issue of bycatch. One of the most criticized aspects of the 1990 Magnuson amendments was the bar on the management of shrimp bycatch. This Amendment literally handcuffed the Councils and the Secretary from addressing one of the major resource problems in the nation. Since 1990, the red snapper resource has been in continued decline. The same restriction, however, called for shrimp bycatch studies and the cooperative development of a research and management plan to address the problem. Despite some bureaucratic delays, that process is underway. Information will soon be available to the National Marine Fisheries Service to establish management measures to substantially reduce bycatch without significantly reducing shrimp harvest. In addition to the shrimp fishery, there are many other bycatch problems around the Nation that need to be addressed.

**Third,** each year since the formation of the Councils, one group or another has argued that the Councils do not represent the appropriate interests. Most recently, it has been that the Councils, particularly the ones in the South, are weighted too heavily with recreational fishermen. The fact that a Council member votes for a conservation measure does not make him anti-commercial and, somehow therefore, a recreational fisherman. This over-simplification is used to explain all sorts of decisions that go against vested interests. The reality is that decisions are made for all kinds of reasons, but most of them are because of the need for rational conservation of the resource.

The 1990 amendments attempted to address the issue of balance by requiring the Secretary to categorize members of the Councils. Judging from the reports issued to date this appears to have resulted in some creative accounting while there is little to suggest that the ratio has been improved either way. The reality is that categorizing council members is the wrong solution to the problem of improving the quality of the Council members.

One way to improve the Council system would be to address the conflict of interest problem. The conflicts issue will always be difficult, but clearly Congress ought to do more than just require disclosure of financial interests. Membership on Fishery Management Councils should be restricted to those individuals who have a direct interest in the resource. No one should be paid by an outside source for their representation on a Council. For example, association directors, lawyers and consultants should be barred from membership. Council members ought to be there to express their own views not the views of the people they represent.

The type of person you would wind up with are real volunteers, present or past participants in the fishery, people with academic or conservation interests and not a group being paid to represent an interest. AFTMA believes that Councils should be composed of a broad spectrum of knowledgeable individuals with varied backgrounds. Members should utilize information and make judgments about the best use of the resource for the nation, not for the people who are paying their salary.

**Fourth,** we need to improve the day-to-day operations of the management system. The National Marine Fisheries Service has historically borne the brunt of criticism for the lack of conservation in marine fisheries. They will be criticized today for being too responsive, totally non-responsive, too dominant or not dominant enough. The recreational industry argued for years that NMFS was the captive of the commercial industry and now the commercial industry argues that the agency is the captive of the recreational industry. These criticisms do not evolve from the structure of the management system itself. Councils in the first instance develop policy. If the policy is consistent with the statute, then the Secretary adopts and implements it. Every group

gets at least two and often three opportunities to express its views on the eventual policy. They can do it at the planning stage through the EIS and regulatory review process, and, ultimately, during the adoption of the plan and implementing regulation. The criticism does not result from the structure of the system--it results from groups not getting the answer they want. The basic system is sound but some improvements could reduce the criticism further.

Congress needs to restrain itself from trying to micro manage fisheries by statute. Congress wants and needs to be responsive to its constituencies, but development of specific management measures through legislation does not work very well. As a guiding principle, fisheries management works best when the lowest level of effective government issues the regulations. They are accepted by the users more readily and are generally more responsive to the needs in the fishery. By strengthening the Councils and providing for more certainty in the NMFS approval process, Congress will get better and more responsive management.

NMFS needs to be encouraged to promote limited entry in every form available. Moratoriums, transferable landing rights, transferable quotas and vessel substitutions all need to be addressed. An auction system should be examined for surplus fisheries and the restrictions on the costs of licensing should be eliminated from the Act. It is time to give the managers all the tools necessary to manage the fishery in a reasonable fashion. Once you institute a conservation ethic in all of the users of the resource, you will reduce the pressure on the Congress, the Administration and the Councils to allow larger catches of a dwindling resource.

**Fifth**, one of the major nagging problems in fishery management has been what to do about interjurisdictional fisheries. Two separate problems exist. The first is the problem of fish that swim between state and the federal waters. For lack of a better term, let's call these seaward fisheries. The other is the case of fish that swim in more than one state. Let's call these lateral fisheries. The problem is, who decides who will catch what within each of the boundaries and still maintain a comprehensive scheme that conserves the entire fishery. Councils were intended to address the EEZ fisheries and, because they include state managers in their membership, they can blend a series of management measures together to form a comprehensive conservation scheme. This is the present system for the management of Gulf redfish which is enjoying a significant recovery.

However, Congress needs to develop a method to improve the management for lateral fisheries. As a part of this effort, Congress need to determine the best group to develop management policy and then put in place a mechanism that allows that policy to be implemented in separate jurisdictions. The policy formation body should develop performance and conservation goals that can be implemented in various jurisdictions, differently, as long as the goals are met. In the event they are not met, there needs to be a mechanism to review and encourage jurisdictional compliance. The system must encourage cooperation toward a single goal, not the imposition of one jurisdiction's view of management on another. Without such a mechanism, particularly on the East Coast, management of many valuable recreational species will be unattainable.

**Sixth and last**, it is time to improve the management of highly migratory species. The 1990 Magnuson Act amendments exerted U.S. jurisdiction over highly migratory species of tuna and attempted to adopt a more international form of management for all highly migratory species.

Now we need to put teeth in the approach that will enable us to management and restore the tuna resource and at the same

time, minimize the impact on our own citizens. Since 1976, every country in the world has established at least an economic zone out to 200 miles. Most countries have established extensive management inside of those zones for resident species. Tuna and other highly migratory species do not reside in any country's 200-mile limit exclusively. Until two years ago, the United States did not even recognize another country's right to manage these species except internationally. On the international level, our policy was one of obtaining access for our distant water fleets and on the East Coast ensuring the availability of our "share" of bluefin tuna.

Times have changed. International conventions like the recent one in Rio suggest that the world is ready to begin to talk about managing international resources with a common conservation theme. Using economic sanctions to enforce environmental and conservation statutes offers an enforcement mechanism that can put some teeth into mutually agreed upon conservation measures. It is time to initiate an international high migratory conservation convention to manage these resources while they can still be conserved.

I hope some of these ideas and comments help to provide some thoughts for the Committee as it works toward the reauthorization of the Magnuson Act.

Thank you for allowing AFTMA to testify.





APRIL 21,1993

PREPARED TEXT OF STEPHEN SLOAN, VICE CHAIRMAN OF THE BILLFISH FOUNDATION

FOR: THE SUB-COMMITTEE ON FISHERIES MANAGEMENT FOR THE REAUTHORIZATION OF H.R. 780, THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

I AM THE VICE CHAIRMAN OF THE BILLFISH FOUNDATION AND ORGANIZATION DEDICATED TO THE PRESERVATION OF BILLFISHES THROUGH CONSERVATION AND RESEARCH. WE HAVE FUNDED MANY WORTH WHILE PROJECTS SUCH AS: A TETRACYCLINE TAGGING PROGRAM WHICH SHOWS THE GROWTH OF BILLFISH AT SEA, A DNA STUDY FOR SPECIE IDENTIFICATION PURPOSES, A BIBLIOGRAPHY OF ALL BILLFISH MATERIALS IN PRINT, THE ICCAT OBSERVER PROGRAM, AND A STUDY ON THE IMPACT OF RECREATIONAL; BILLFISH ANGLING TO THE VARIOUS ECONOMIES OF THE COASTAL STATES, AS WELL AS THE DEVELOPMENT OF A NEW BILLFISH AND TUNA TAGGING SYSTEM TO INSURE GREATER TAGGING RETURNS. WE HAVE BEEN INVOLVED WITH MANY OTHER RESEARCH PROJECTS SINCE OUR INCEPTION SOME 5 YEARS AGO. WE HAVE ALSO DEVELOPED THE "NO MARLIN ON THE MENU" SLOGAN FOR PUBLIC AWARENESS OF THE DEPLETED CONDITION OF BILLFISH STOCKS.

I AM ALSO ASSOCIATED WITH THE FOLLOWING FISHING ORGANIZATIONS IN PRESENTING THIS TESTIMONY BEFORE YOU.

1. MAFAC THE MARINE ADVISORY FISHING COMMITTEE, SPECIAL ADVISOR TO THE NATIONAL MARINE FISHERIES SERVICE.
2. ICCAT I SERVE ON THE UNITED STATES DELEGATION
3. IGFA TRUSTEE, THE INTERNATIONAL GAME FISH ASSOCIATION
4. NCMC DIRECTOR, THE NATIONAL COALITION FOR MARINE CONSERVATION
5. CAACC CHAIRMAN, THE CONFEDERATION OF THE ASSOCIATIONS OF ATLANTIC CHARTERBOATS AND CAPTAINS
6. PDF CHAIRMAN, THE FISHERIES DEFENSE FUND INC.
7. UGA DIRECTOR, THE UNITED GAMEFISH ANGLERS
8. DXC THE DIOXIN COMMITTEE OF NEW YORK AND NEW JERSEY
9. REC RECREATIONAL FISHERMAN, HOLDER OF 41 WORLDS RECORDS

PAGE 2-

I REPRESENT THE RECREATIONAL FISHERMAN AND THE CHARTERBOAT INDUSTRY OF THE EASTERN COASTAL STATES. BOTH GROUPS CONTRIBUTE OVER 2 BILLION (\$2,000,000,000) AND 50,000 JOBS TO THE ECONOMIES OF THESE STATES. THE CHARTERBOAT INDUSTRY TAKES OVER 1,000,000 FISHING TRIPS A YEAR WITH OVER 5,000,000 AMERICANS ON BOARD.

IN ORDER TO GRASP JUST WHAT BILLFISHING MEANS TO OUR ECONOMY I AM ENCLOSING AN EXCERPT FROM A REPORT ON THE SUBJECT.  
(SEE EXHIBIT A )

WHAT WENT WRONG? WHERE IS THE NANTUCKET BILLFISH TOURNAMENT? WHERE IS THE OCEAN CITY WHITE MARLIN TOURNAMENT? WHERE IS THE MONTAUK WHITE MARLIN CHARTER BUSINESS? WHERE IS THE MASTERS ANGLING TOURNAMENT HELD IN PALM BEACH FOR THE PAST 28 YEARS? ALL GONE, DEPLETED, THE MASTERS IS NOW BEING HELD IN CANCUN. THERE IS JUST NO FISH AVAILABLE TO SUSTAIN THE ACTIVITY. A REMINDER THAT BILLFISHERMEN RELEASED 98% OF THEIR CATCHES. THEY PRACTICED CONSERVATION FOR MANY YEARS. THEY TAGGED AND RELEASED AS PART OF THEIR OWN RULES. THEY DID NOT SELL THEIR BILLFISH CATCH. SO WHAT HAPPENED?

THE (O) WORD AND THE (B) WORD TOOK OVER. COMMERCIAL OVERFISHING AND INDISCRIMINATE BY-CATCHES ALL PREYED ON THE HIGHLY MIGRATORY SPECIES, ESPECIALLY BILLFISH. THESE CONDITIONS HAVE WRECKED HAVOC ON HIGHLY MIGRATORY SPECIES STOCKS. (SEE EXHIBIT C)

PLEASE REFER TO THE ICCAT WHITE MARLIN CHARTS (ENCLOSED EXHIBIT B) THESE WERE PREPARED BY INTERNATIONAL AND US SCIENTISTS. DOWN .. DOWN .. DOWN. BY WAY OF REFERENCE THE SAME GENERAL TRENDS ARE ON THE CHARTS FOR ALL THE TUNAS AS WELL AS THE BILLFISHES. I QUOTE FROM AN ICCAT REPORT: BIL-4-D-MANAGEMENT 'RECENT STOCK ASSESSMENT RESULTS FOR BLUE AND WHITE MARLIN, WHICH INDICATES BOTH SPECIES ARE OVEREXPLOITED, WARRANT CONSIDERATION FOR DEVELOPMENT OF METHODS FOR REDUCTION IN FISHING MORTALITY RATES ON BILLFISH AT THIS TIME.'

IN ADDITION, ICCAT VOTED THAT ANY FURTHER RESEARCH AND OBSERVER FUNDING MUST COME FROM OTHER SOURCES THAN THE DUES PAID BY THOSE NATIONS. FREELY TRANSLATED: IF THE UNITED STATES WANTS MORE INFORMATION, RESEARCH AND OBSERVERS, THEN LET THEM PAY FOR IT. SINCE WE NOW HAVE THE BURDEN OF THE PURSE, THEN WE SHOULD CONTROL THE OUTCOME.

I THEREFORE RECOMMEND THE FOLLOWING:



PAGE 3-

1. WE SHOULD DELETE OR AMEND THE ATLANTIC TUNA CONVENTION ACT AND THE MAGNUSON ACT TO PROVIDE FOR THE DELETION OF SECTION 206 (B)(K) LANGUAGE. WE CANNOT BE TIED TO THE NON- CONSERVATION EFFORTS OF OTHER NATIONS WHO SHOW NO INCLINATION TO GO AGAINST THEIR SELF INTEREST, WHICH IS CATCHING, KILLING AND SELLING. THE SOLUTION BELONGS IN THE CONFINES OF THE NATIONAL MARINE FISHERIES SERVICE, THE STEWARD OF OUR NATIONS LIVING MARINE RESOURCES. IMPUT FROM THE COUNCIL SYSTEM WOULD BE HELPPFUL. THIS IS A MUST FIRST STEP FOR THE BEGINNING OF A COHESIVE MANAGEMENT AND CONSERVATION PROGRAM FOR BILLFISHES AND INDEED ALL HIGHLY MIGRATORY SPECIES.

2. FEDERAL FUNDING: WE SHOULD REQUIRE A BILLFISH STAMP, A TUNA STAMP, A SHARK STAMP FOR ALL RECREATIONAL FISHERMEN THAT FISH THE WATERS THAT CONTAIN HIGHLY MIGRATORY SPECIES. THIS MONEY MUST BE INVESTED IN A TRUST FUND ADMINISTERED BY A BOARD OF DIRECTORS WHO WILL FUND THE PROJECTS NECESSARY TO THE MANAGEMENT AND CONSERVATION OF HIGHLY MIGRATORY SPECIES. THE BOARD MUST BE COMPRISED ON EQUAL REPRESENTATION OF GOVERNMENT AND RECREATIONAL INTERESTS. CONGRESS CAN HELP BY MATCHING THE FUNDS RAISED.

3. FUNDING FROM THE STAMP PROGRAM WOULD PROVIDE A MANDATORY OBSERVER PROGRAM ON ALL VESSELS THAT ARE HEAVILY ENGAGED IN BY-CATCHES OF HIGHLY MIGRATORY SPECIES. THIS WILL CREATE JOBS WITH A USEFUL PURPOSE.

4. WE PROPOSE BETTER COORDINATION BETWEEN NMFS AND THE STATE DEPARTMENT ON ICCAT ISSUES. THE DEPUTY DIRECTOR OF THE NATIONAL MARINE FISHERY SERVICE OR HIS DESIGNEE SHOULD BE THE CHAIRMAN OF THE ICCAT DELEGATION. HE CANNOT LEAVE THE UNITED STATES WITHOUT A CLEAR UNDERSTANDING WITH THE DELEGATION AS TO THE OBJECTIVES AND GOALS OF THAT DELEGATION. THE OTHER TWO COMMISSIONERS ONE FROM THE COMMERCIAL SECTOR AND ONE FROM THE RECREATIONAL SECTOR MUST TRULY REPRESENT THEIR CONSTITUANCY. THE RECREATIONAL COMMISSIONER MUST BE FROM THE EASTERN PART OF THE UNITED STATES AND HAVE THE BACKING OF THE USER GROUPS AND THE ASSOCIATIONS THAT ARE ENGAGED IN THE FISHERY.

5. THE RIPPLE EFFECT: THE FOLLOWING BUSINESSES ARE IMPACTED BY A

PAGE 4-

DAY'S FISHING FOR ANY ONE OF THE HIGHLY MIGRATORY SPECIES. FUEL, ICE, BAIT, TACKLE, RESTAURANTS, FOOD, CLOTHING, MOTELS, GAS STATIONS, DRUG INDUSTRY, MARINAS, BOAT SALES AND REPAIRS, MARINE PARTS, DIRECT WAGES OF THE MANY CREWS INVOLVED, NEWSPAPER ADVERTISING, MAGAZINE ADVERTISING, THE TRAVEL INDUSTRY, HOSTS OF HIDDEN TAXES ON FUEL AND TACKLE AS WELL AS LOCAL SALES TAXES.

WE ARE SEEKING A REASONABLE ABUNDANT, STABLE FISHERIES. WE HAVE HAD TWO DECADES OF EXPLOITATION, OVERFISHING, AND UNRESTRICTED BY-CATCHES.

IT IS ONLY IN THE LAST TWO YEARS THAT HAVE WE FOCUSED ON THE MANY PROBLEMS. EVEN NOW, WE HAVE TO FACE THE PROSPECT OF UNRESTRICTED DIOXIN DUMPING IN ONE OF THE RICHEST FISHING GROUNDS ON THE EASTERN COAST, OFF SANDY HOOK NEW JERSEY. AS RECREATIONAL FISHERMEN, WE HAVE CONTRIBUTED MASSIVE AMOUNTS OF MONEY TO THE COASTAL STATES ECONOMIES, WE HAVE LOST OUR MARLINS, WE HAVE LOST OUR FLUKE, WE HAVE LOST OUR WEAKFISH, WE HAVE SEEN SERIOUS DECLINES IN SHARKS, TUNAS, WHITING AND COD. WE CANNOT CONTINUE GOING FISHING AS A MEANS OF RECREATION ANYMORE UNLESS SOMETHING IS DONE. MANY SMALL BUSINESSES, THE BACKBONE OF AMERICA, WILL LOSE OUT WHILE WE LET OVERFISHING AND INDESCRIMITATE BY-CATCHES PROLIFERATE.

THE RIGHT TO ENDURE GIVES US THE RIGHT TO KNOW. WE HAVE ENDURED, WE WOULD LIKE TO KNOW HOW YOU, THE REPRESENTATIVES OF THE AMERICAN PEOPLE WILL RESTORE OUR FISHERIES. I HAVE PROPOSED SOME IDEAS THAT WILL HELP.

I WOULD LIKE TO THANK CONGRESSMAN MANTON AND THE MEMBERS THE SUB-COMMITTEE FOR ASKING ME TO TESTIFY BEFORE YOU.

STEPHEN SLOAN, VICE-CHAIRMAN THE BILLFISH FOUNDATION



- Billfish tournament anglers reported an average of 13 billfish trips per year with each trip lasting an average of 2.7 days.
- On the average, each angler kept one billfish per year. However 29% of the billfish tournament angler population accounted for 100% of the billfish mortality.
- Mid-Atlantic billfish tournament anglers were the most successful in catching billfish and released the most billfish. Gulf of Mexico anglers made the fewest trips per year and were the least successful. Caribbean anglers made the most billfish trips per year and killed the most billfish.

#### *Economic Value of the Recreational Billfish Fishery*

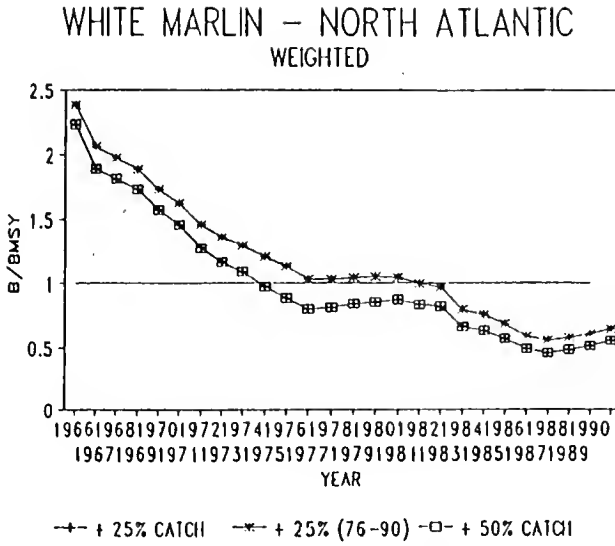
- On their last billfish trips (2.59 days), anglers spent an average of \$2,147 including tournament fees.
- Billfish tournament anglers were willing to pay an additional average price of over \$200 (consumer surplus) above and beyond their total trip expenditures for the opportunity to catch billfish and would probably be willing to pay more if billfish abundance were to increase.

#### *Population Projections of Harvest and Expenditures*

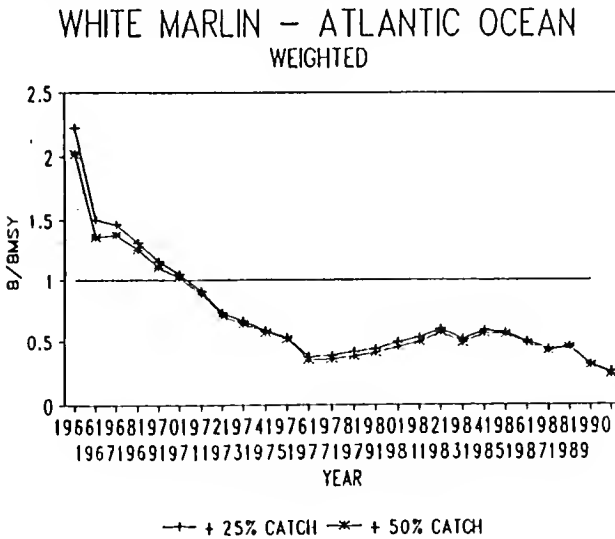
- An estimated 7,195 billfish tournament anglers in the study region made a total of 102,895  $\pm$  6,512 billfish fishing trips. Forty percent of these trips were successful in that at least one billfish was caught. This group booted 50,373 billfish and killed 5,541  $\pm$  715 billfish. The total catch (booted) was 38% sailfish, 33% blue marlin, 29% white marlin and < 1% spearfish.
- Billfish tournament anglers in the study region spent \$164,735,000 in pursuit of billfish excluding tournament fees. This amounts to \$3,310 per billfish caught or \$29,730 per billfish killed. Tournaments generated a total expenditure of \$58,964,000 of which \$14,693,000 were tournament fees. This amounts to \$43,565 for every tournament-killed billfish.

SCRS REPORT  
Sun, Nov 1, 1992, 19:27

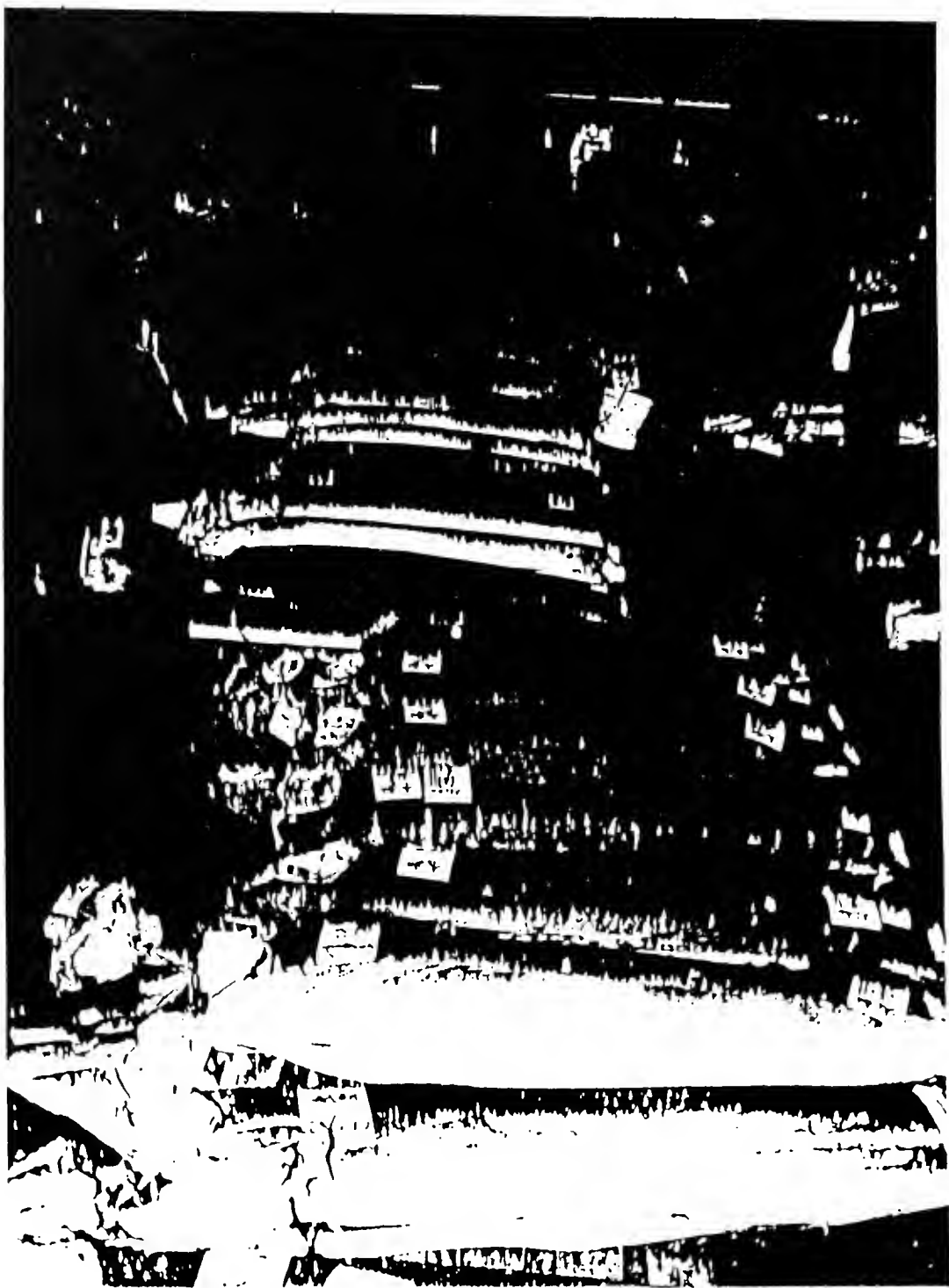
EXHIBIT D



BIL-Fig. 13A. Sensitivity tests for white marlin, north Atlantic. Estimated trajectory of  $B/B_{MSY}$ . The first three years have been omitted, as estimates are less precise.



BIL-Fig. 13B. Sensitivity tests for white marlin, total Atlantic. Estimated trajectory of  $B/B_{MSY}$ . The first three years have been omitted, as estimates are less precise.



ADELAIDE • AMSTERDAM • ANCHORAGE • AUCKLAND • BRUSSELS • BUENOS AIRES • CHICAGO • COPENHAGEN • DUBLIN  
GOTHENBERG • HAMBURG • LEWES—U.K. • LUXEMBOURG • MADRID • MONTREAL • NEW YORK CITY • OSLO • PALMA DE MALLORCA  
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# ***GREENPEACE***

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STATEMENT OF  
GREENPEACE  
ON THE REAUTHORIZATION OF  
THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT  
ACT OF 1976  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON MERCHANT MARINE AND FISHERIES

DRAFTED AND DELIVERED BY

GERALD B. LEAPE  
LEGISLATIVE DIRECTOR

APRIL 21, 1993

Good afternoon, Mr. Chairman and Members of the Committee. My name is Gerald Leape, and I am the Legislative Director for Ocean Ecology for Greenpeace. Thank you for the opportunity today to present testimony on behalf of the Marine Fish Conservation Network. This group of nearly two dozen conservation, sport and commercial fishing groups has come together around a common objective; make conservation of the resource the primary objective in U.S. fisheries management. Conservation does not mean complete protection, it means managing in a way that promotes long term viability of the resource.

As you are well aware, Greenpeace has been involved in fisheries issues both on the high seas and within our nation's 200-nautical mile Exclusive Economic Zone (EEZ). We also work with our offices worldwide on fisheries issues and seek to advocate sustainable fisheries management that is based on maintaining healthy marine ecosystems.

Through our battles to ban large scale driftnets from use on the high seas and the often controversial but never solved tuna-dolphin issue, we have worked with this committee for many years on fisheries issues. During the last round of amendments to the Magnuson Act, 1989-90, we had the privilege of testifying before this committee about our concerns with the way U.S. fisheries were managed. That was our first foray into the broader issues of U.S. commercial fisheries management. We were the new kids on the block and felt like a lone wolf's voice in the wind. This

year, the situation is different.

The Marine Fish Conservation Network steering committee, composed of the World Wildlife Fund, Greenpeace, the National Audubon Society, the National Coalition for Marine Conservation and the Center for Marine Conservation have all made achieving change in the way U.S. fisheries are managed a top priority. In addition to increasing our legislative involvement, we are also increasing our involvement on the fishery management councils and have agreed as a top priority to build a new constituency that is concerned about the way we manage our fish. In addition, we appreciate your recognition as chair of the importance of the conservation community in the debate by inviting three of us to testify today. We trust that this is the beginning of a pattern and not a one time exception to the rule. We appreciate your willingness to have two of us testify before you today. The statement we submitted last time details our agenda for change so I will not repeat it at this juncture.

However, I do want to join my colleague from the Network and the Chairman in echoing the sentiments that inaction during this round of amendments is unacceptable. Without change, we feel that, if fish populations are allowed to continue to decline, it could bring on a crash in the fishing industry from which it will be unable to recover. The effects of a crash in multiple fish stocks would have a catastrophic effect on the marine environment. We need to make conservation a top priority in the

way we manage our fisheries.

However, today I have been asked to address the age old issue of bycatch in fisheries and address the critical need to transform the way in which the nation's fisheries are prosecuted. Bycatch should be defined as: the incidental catching, taking or harvest of:

(A) marine mammals, turtles, birds and fish that are not the target species of the fishery in which a fishing vessel is engaged; and

(B) fish of the same species targeted by the fishery in which a fishing vessel is engaged and are prohibited catch by operation of conservation and management measures promulgated under a fishery management plan.

U.S. commercial fisheries ranges from almost nothing to nine pounds of non target species for every pound of intended catch. Globally, the by-catch rate is estimated to be between 10-20% of the total catch or between 12-20 billion pounds of fish each year (using the 10% end of the scale). (Bricklemyer, 1989)

In the U.S., bycatch of nontarget species occurs in fisheries from New England groundfish to Gulf shrimp to Bering Sea groundfish to Florida mullet (NMFS 1992). Each fishery is different. The nature of the bycatch is different. The way it

occurs varies and therefore the solutions will be different.

Environmental organizations have in the past successfully used wildlife protection statutes to get at bycatch of protected species such as birds, turtles and marine mammals (See, e.g., Final Rule requiring turtle excluder devices in shrimp trawls, 57 Fed. Reg. 57348 (Dec. 4, 1992)). Some fishing organizations have used the same statutes to get at bycatch of their target fish species by other gear groups. (Kokechik Fishermen's Assoc. et al v. Secretary of Commerce et al 679 F. Supp. 37 (D.D.C. 1988), aff'd, 839 F2d 795 (D.C. Cir. 1988 cert denied, Jan. 1989)

Recent compilations of bycatch research worldwide indicate it may be more detrimental to fish abundance and diversity than overfishing. In the U.S. we may have been underestimating its effects for years.

In our view, bycaught species hold an intrinsic value in marine ecosystems irrespective of their commercial value. The industry should be held accountable for both target and non-target species, for the health of commercial fisheries is dependent upon the ecosystems of which they are a part. As you can see from the statement we collectively submitted for the last hearing record, the Marine Fish Conservation Network recognizes the need to address a number of issues but reducing waste, through reducing bycatch, is a top priority.



## BYCATCH: ONE PERSON'S GARBAGE IS ANOTHER PERSON'S TREASURE

Bycatch is a term that has many definitions and therefore presents an interesting problem. In many commercial fisheries, the non-target species caught is a target species for another fishery. These species may be retained or discarded depending on the value and/or the regulations. Additionally, many non-targeted fish species are also non-utilized species and therefore have no value. In many cases, bycatch species are discarded or transformed into products such as fish meal.

Another more pervasive problem with bycatch is the subsequent discarding of these species. Fish are thrown over the side of the boat because of low market value, size, sex, and regulations that limit retention. There are no actual figures for the amount of species that are discarded, and therefore, the actual amount of impact on the marine environment is unknown.

Should we control bycatch? You have heard most of the reasons for doing so: Bycatch causes waste of consumable protein; interference with allocations among gear groups; unregulated (and unreported) catch in depressed stocks already managed at the edge; potential effects on recruitment of fishable populations where bycatch is of juveniles or undersized fish; delays in or failure of recovery in depressed stocks where

bycatch is of juveniles and/or undersized fish; and potential effects on distribution and abundance because it interferes with predator/prey relationships (NMFS 1992).

From the conservation perspective, there are at least two more reasons: When bycatch is discarded, it has ecological consequences. It transforms active participants in the ocean cycle to passive, vulnerable prey, or more commonly, into carcasses and detritus. Scavengers and decomposers enter the scene, changing community structure and diversity, enhancing energy turnover, nutrient release, and biochemical oxygen demand. (Bricklemyer 1989) Second, if species with no present commercial value are taken as bycatch and discarded without any attempt to gain knowledge about them, we may lose the potential for using that species in the future when it may have a market value. (Id.)

Currently there are few disincentives for catching non-targeted species. Management tools that are used include placing caps on species that are not allowed to be retained and when the cap is reached the fishery is closed. Other regulations attempt to prohibit the discarding of target species (pollock roe stripping). But none of these measures have solved the problem. In order to move forward and address these problems the agency must rely on accurate tabulation of bycatch and discarded species.

## GEAR SELECTIVITY

The most obvious problem in the nation's fisheries is reflected in the lack of emphasis in developing more selective gear. For centuries, there has been little change in the method of fishing for fish species. Gear has become more efficient, boats more powerful, fish-finding techniques more precise all in order to remove more fish in the shortest amount of time. But economic "efficiency" does not imply better fishing techniques. With improvements in technology, the bycatch problem has been exacerbated and more difficult to contain.

The various gear groups must be held accountable for all species caught during fishing operations. When different gear groups are targeting the same species, the most selective gear should be given preferential allocation. The data that should be relied upon is that provided by the scientific observer. In the North Pacific for example, observers sample a large percentage of the catch that is brought aboard vessels and this data is then provided to NMFS. These data provide the only unbiased information on fisheries as they are prosecuted and therefore are critical in the accurate tabulation of fishery removals.

Over time the amount of bycatch must be limited to a level approaching zero. If a vessel does not improve its fishing

technique, then it should be penalized and allocated a smaller number of catch. Eventually, the most selective gear will prevail and the amount of impact on the marine environment lessened.

#### PROBLEMS WITH BYCATCH AND THE LACK OF UNDERSTANDING ABOUT MARINE ECOSYSTEMS

Additionally, because target fish species do not exist in a vacuum, the continued extraction of large amounts of fish affects the abundance and condition of populations of other marine species. Most fisheries follow the "boom and bust" pattern where one commercial fish species replaces another. This has cascading affects on all species throughout the ecosystem.

NMFS acknowledges that the levels of exploitation are unknown for 34% of the species subject to exploitation in US waters. As NMFS admits, the unfortunate consequence is that such lack of precision and knowledge in assessments of fishery resources is often used to argue that the evidence of over-exploitation is not strong enough to justify restricting a fishery. This argument has led to the depletion of many stocks. Approximately 65 of 153 species or species groups for which status has been assessed by NMFS are over-exploited.

## THE PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT

The precautionary approach is an effort to employ prudent forethought to minimize the risks posed by living marine resource exploitation to ocean ecosystems. The precautionary approach recognizes that there are large gaps in the fundamental understanding of dynamics of living marine populations and of the ecosystem of which they are a part. In order to change the focus of fisheries management away from single-species and towards multi-species, there are major obstacles to overcome. It is widely recognized that uncertainty in both fishery data and environmental conditions affecting fish population dynamics, constitutes a major obstacle to effective management. Because of this, a precautionary approach to the interpretation of survey and stock assessment results, as well as to fishery management decisions is of primordial importance.

Fisheries management to date has not taken into consideration interactions between the dynamics of target species and the ecosystem they inhabit. This single-species approach is myopic and ignores that marine species do in fact interact. Consequently, this approach has not been conservative enough to buffer the negative effects of fishing on the various components of the ecosystem. Multi-species modeling is data intensive and expensive to develop, however, the need for change is apparent

since it is increasingly recognized that the dynamics of a fishery are not solely determined by intrinsic population factors, but by both biotic and abiotic factors.

#### A NEW APPROACH

While we expect industry initiatives to continue, we need to amend the Magnuson Act to establish a program that is consistent with the principles mentioned above. As is the case with the interaction problem with marine mammals, the mandatory program should begin with the fleets who have the greatest problem.

As we saw with the Pacific Whiting decision by the Clinton administration last Thursday, more selective gear is not always given preferential allocation. First, observers must be required on all boats. The next step would be to prioritize the research based on information already provided and continue to include a systematic collection of fish catch data that gathers accurate information on catches, species composition (including bycatch, discards mortality), marine mammal interactions, and fishing effort. They should set specific standards for the specific fishing gear and frequent reporting requirements. Failure to maintain these "clean standards" would result in penalties The federal government would take this new information and, in cooperation with industry, develop a plan to achieve reductions in the bycatch to meet these standards. All options would be

considered including: conservation engineering, gear development programs or traditional methods of fish management such as time and area closures. However, the emphasis would be towards increasing gear selectivity, while controlling overall fishing effort.

To spur movement on this program, a schedule of reductions in bycatch would be developed which if not adhered to could be grounds for shutting down the fishery. If there was an ongoing program, the government should direct the program toward increased selectivity of the fishing gear so that the problem is truly addressed.

In addition, utilization of fish species should be limited to human consumptive products. Fish meal processing should not be a way to justify bycatch because, this does not serve to lessen the amount of bycatch. In addition, although the "Second Harvest" program has a laudable result, it avoids dealing with the true problem of lessening the impact on the species.

As a secondary priority, fishery observers should be placed in all fishery's at a statistically significant level to determine the extent of the bycatch problem. Licensing fees would then be set accordingly at a level to pay the costs of addressing the problem. On this part of the fishing fleet, participation in this bycatch reduction program would involve

having an observer on the boat and full participation in the aforementioned joint government-industry programs to reduce waste.

#### HOW TO PAY FOR IT

The first stop is fiscal 1994 appropriations. We will be pushing, hopefully with the industry, for more funding for the fisheries service to increase the monies for fish population assessments, technology research, conservation engineering. The President's budget request did not prioritize these programs so we must work doubly hard to get the funding restored and increased. However, we don't anticipate being successful in persuading the appropriations committee to fund the complete cost of the bycatch initiative.

To make up for the shortfall, as with marine mammals, licensing fees could be set according to the level of bycatch. The intention would be that the primary program fees would pay all the costs of the program. With the primary part of the program the incentive for participation would be a large disincentive (huge fine or forfeiture of quota). Those who participated in the program would be rewarded with lower fees as there level of bycatch decreased.

With the secondary priority fisheries, there would be a



series of lower fees that were designed to pay for just the observers with a little extra to offer rebates to those who's performance improved.

Another option for the short term to encourage participation in a program to reduce bycatch would be to have observers on every boat forcing the retention of all fish caught and levy a series of fines for all bycatch brought in. While this would not lessen the impact on the non target fish, it might provide sufficient incentive to enter a true bycatch reduction program.

In these days of declining budgets, in order to free up adequate national funding for research, we believe that the funding responsibility for management should move from the federal government to the industry. this would allow for NMFS to more adequately fulfill the more appropriate role of research and biological assessment.

Another option is to ensure that the burden of this program is born equitably by the commercial fishing industry through a tax on the ex-vessel value of the fish or in the case of the sport fishing industry an increase in licensing fees. For years, the cost of observers have been born by the government exempting the industry from the cost of management of a resource that it benefits from, that must change.

However, we want to emphasize the importance to us of

finding a mechanism to collect these fees that will ensure that they are used for the intended purpose. We look forward to working with you Mr. Chairman, the rest of the committee and the rest of the industry in enacting that funding mechanism.

#### IMMEDIATE OPTIONS FOR ACTION WHILE AWAITING A LEGISLATIVE SOLUTION

In the short term as the above programs are getting established, the Fishery Management Councils could more rigorously apply some non fishery laws as additional options for controlling bycatch. This section examines a few: the National Environmental Policy Act (42 U.S.C.A. §§ 4321 et seq., Pub. L. 91-190, 83 Stat. 852 (1970)), the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq., Pub.L. 93-205(1973); Pub.L. 96-159(1979); Pub.L. 97-304(1982); Pub.L. 100-478(1988), and the Clean Water Act of 1948 (33 U.S.C §§ 1251 et seq., as amended, Pub.L. 92-500 (1972); Pub.L. 95-217(1977); Pub.L. 100-4(1987).

NEPA would enable decision makers, in this case, regional fishery management councils, to examine larger issues and an environmental scope that goes beyond the single species that is the subject of a management plan. It could provide a means to examine ecosystem relationships, or the potential long-term effects of bycatch on non-target fishes. The use of NEPA's alternatives analysis would enable the Councils to examine

various options to regulate bycatch. It could be used, for example, to analyze measures ranging from full utilization to gear changes, and the potential environmental benefits and socioeconomic impacts of each. The EIS process also provides an avenue for comment by a wide variety of interests, and provides a record for the decision-maker. Rather than embracing NEPA as a tool for informed decision making, councils have often complained that it complicates and extenuates the FMP process. While we understand the desire to better mesh NEPA's timelines with the fishery management plan development process, efforts to eliminate NEPA's alternatives analysis from fishery management planning would remove an important tool from the Council kit.

Signed into law in 1973, the Endangered Species Act's (ESA) intended purposes are "to provide a means whereby the ecosystems upon which endangered and threatened species depend can be conserved," and "to provide a program for the conservation of such endangered species and threatened species" (16 U.S.C. 1531(b)). In actual fact the Act has been primarily used for the latter and little used for the former.

Potential fish bycatch applications of the ESA include the use of the §7 consultation function to bolster council decision-making, the coupling of recovery plan measures with fishery management plans, and the regulatory possibilities of its incidental take permits. For example, as difficult as the process has been, the ESA-engendered requirement for Turtle

Excluder Devices (TEDs) in the Gulf of Mexico shrimp trawl fishery may provide conservation engineering ideas to reduce bycatch of some finfish in shrimp trawls.

The Clean Water Act (CWA) was passed by Congress to reduce pollution of our lakes, streams, and rivers, and to make them "fishable and swimmable." The Clean Water Act was designed to control pollution at the point of discharge, or "end of the pipe." It has been suggested that a discard of non-target bycatch may be a "discharge of a pollutant" under the Clean Water Act. (Bricklemeyer 1989) Is it beyond the realm of possibility that if such were the case, a discharge permit could be required for the end of the pipe that spews pollock carcasses after the roe have been processed?

#### CONCLUSION

In closing, we will seek enactment of an amendment that will make, as one of the goals of the Magnuson Fisheries Conservation and Management Act, "to reduce to insignificant levels approaching zero" the level of bycatch in commercial fisheries. The statement of this goal in the MMPA has been an important foundation for the progress that has been made during the last twenty years in the Eastern Tropical Pacific Tuna fishery. Without that long term goal, there would not have been any incentive to address the problem of bycatch of marine mammals in

our commercial fisheries.

In addition, as there is a growing consensus that global fishing effort may be at its peak, finding cleaner ways to fish will become increasingly important for all nations. By expanding its research program into more selective technologies, NMFS has the opportunity to put the U.S in a leadership position in development of these technologies, spawning a new industry which could create jobs.

By addressing what is a global problem in our own Exclusive Economic Zone, the US can assert itself as a world leader in the development of clean technologies that can be exported to all fishing countries around the world.

We look forward to working with you Mr. Chairman to develop a program that will address this horrible problem of waste in our commercial fisheries.

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**Statement**

**Of the Seafarers International Union of North America**

**On**

**The Magnuson Fishery Conservation**

**And Management Act of 1976**

**Before**

**The Subcommittee on Fisheries Management**

**Of the House Committee on Merchant Marine and Fisheries**

**April 21, 1993; 2:00 pm**

**1334 Longworth House Office Building**

**Washington, D.C. 20515**



Mr. Chairman, Members of the Subcommittee:

In behalf of its members who earn their livelihoods as commercial fishermen, the Seafarers International Union of North America would like to thank the Subcommittee on Fisheries Management for holding this hearing and providing the opportunity to people who feel the effects of the Magnuson Fishery Conservation and Management Act (Pub.L. 94-265 as amended) every day of their lives with an opportunity to comment on the manner in which the law is serving their interests as well as the interests of the nation as a whole.

The Seafarers International Union, also called the "SIU," represents commercial fishermen who live in Massachusetts, New Jersey, Washington, Alaska and California. These fishermen are either independent vessel owners/operators or crewmembers. Because they are geographically dispersed, four separate Management Councils (New England, Mid-Atlantic, Pacific, North Pacific) govern the fisheries in which these fishermen ply their trade. Additionally, the SIU is familiar with the processing end of the seafood industry as it represents hundreds of workers who are employed in fish-canning operations, California, Oregon, Washington and Alaska.

From the standpoint of the SIU fishermen and their families, the fruits of the Magnuson Act have turned sour. It would be fair to say that the majority of



American fishermen feel the same way. There is widespread disillusionment with the role of government in the process of fisheries management. There is a feeling that the National Marine Fisheries Service (NMFS) and the Regional Fishery Management Councils (the "Councils") are in the business of driving fishermen out of business. There is a sense that the process encourages upside down priorities; the Councils disregard the concerns of, and concern for, the people who earn their livelihoods in the fisheries as commercial fishermen or charter-fishing operators and instead coddle the leisure class, those people who choose to spend their free time in pursuit of fish. Fishermen sense that the big winners of the management process are huge vertically-integrated corporations with deep enough pockets to withstand the myriad requirements of various federal, state and local regulations.

Finally, there is the pervasive feeling among fishermen that they are subjected to a governing system akin to that of a totalitarian regime. A party of a few elites (Council members, scientists, etc.) determine every aspect of a fishermen's life -- when and where he will work, what he will wear and so on. Just as all dictatorships like to shroud themselves in democratic terminology, the Councils show superficial openness. But when the hearings are done and the fishermen have had a chance to vent off steam, the "social engineers" who manage the fisheries do what they please and do it with impunity. Such is the feeling of the men and women who earn their livelihoods harvesting the oceans, bays and rivers for fish and shellfish.

The way in which American fisheries are managed is anti-democratic, chaotic and headed on a disastrous course. In fact, the fisheries are managed in a manner that is antithetical to the Magnuson Act. It is up to Congress to put the implementation of the Magnuson Act back on track.

Given the high level of dissatisfaction with, and the seeming state of disarray within the management process, the SIU recommends the House Subcommittee on Fisheries Management hold regional hearings throughout the country. Each individual and organization on the mailing lists of the Councils should be sent an advisory of the dates, times and places of such hearings.

The SIU also notes that fixing this will be an ongoing process which will take careful supervision and positive input on the part of Congress. In this regard, the SIU and its member fishermen believe that it is important to have a House Merchant Marine and Fisheries Committee and its Subcommittee on Fisheries Management that can address these matters in earnest.

Additionally, the SIU recommends that Congress charter and empower a commission to make a comprehensive study of the manner in which American fisheries and American access to migratory species is being managed. While recent studies have focused on the status of marine resources, there is an immediate and alarming need for a comprehensive review of the management

process. Such an investigative body could work with an inter-agency governmental task force, the appropriate committees of Congress, representatives of fishermen in the commercial sector, charter-fishing operators, recreational fishing interests, environmental organizations, consumer groups and others interested in the management of fisheries. The expertise of academics, management consultants and experts in the workings of government could be solicited.

The commission also could be authorized to make a thorough study of the management process as well as to make extensive recommendations for restructuring, if deemed necessary. The participants of the commission should have full access to the workings of the Councils and NMFS. The commission should not be dominated by the Councils, or NMFS, or by members of the research community who are completely or largely dependent on NOAA or NMFS research grants. The commission should hold regional hearings and accept information from all interested parties for consideration. A report of the commission should be made to Congress and the President of the United States before the Magnuson Act comes up (after the 1993 reauthorization) for reauthorization.

What follows are the recommendations of the SIU in regard to the 1993 reauthorization of the Magnuson Act.

## SUPPORT FOR FAMILY FISHERMEN

The Magnuson Act should be amended to include a finding, a purpose and a policy concerning the validity of; the economic importance of; and the social importance of small and family oriented fishing operations. The independent fisherman, the small boat owner/ operator, those who have passed on a fishing tradition from one generation to another, are an invaluable part of the fisheries system. These fishermen and their families also are an integral part of our coastal communities -- from Maine to Alaska. They represent what America is supposed to be about -- the ability to earn a livelihood which affords a home, a college education for the children.

If Congress considers a hierarchy of needs and interests, those who earn their living and support communities from participation in the fisheries, should be considered foremost in any management and conservation plan. Additionally, the primary economic incentive for this industry should be spelled out as that of garnering a livelihood from harvesting the ocean's resources in a responsible manner.

Independent and family and small operations should be broadly defined to include those operations where ownership of a vessel is closely linked to the vessel both geographically and as a major source of income. "Traditional" and "historic"

also are terms which can be linked to this kind of operation as the vast majority of independent fishing operations involve a generation of fishermen who learned the trade from a previous generation who learned their skills from their fathers and uncles, and so on. A "small" operation depends on the type of fishery and location that a boat is fishing. The main characteristic in this regard is a close bond between the owner and the sea. In other words, it is likely the owner of the vessel also is a fisherman who earns his livelihood, or a significant portion of it, from participating in fishing operations from his vessel.

Some have argued that the Councils cannot and should not be in the business of showing preference for one group or another. Talk of directing a plan in such a way that it ensures the survival of the independent owner-operated commercial fishing fleet is dismissed in some quarters as "social engineering" and it is argued that the Councils should not be in the business of deciding "winners" and "losers" under their plans. The plain fact is, that every time a given Council develops a Fishery Management Plan (FMP), it either consciously or unconsciously makes just such choices.

The choices being made, for the most part are slamming the small-scale fisherman. This is evident in the hearing testimony of fishermen who explicitly detail what past and future management schemes have done and will do to their business. Any member of the public, including elected officials, can attend these

hearings and hear absolutely heart-breaking stories of loss and despair. In nearly every instance, these fishermen are engaged in small-scale fishing operations which manage to eke out a middle-class existence for these men and their families.

In depleted fisheries, where everybody knows that sacrifice is at hand for the future good of the industry and the stocks, the question becomes how best to spread this sacrifice. Currently the Councils are making decisions which force small-scale fishing operations out of business and encourage the development of the easier-to-control large-fleet operators. Perhaps there is no ill-will on the part of fisheries managers towards the independent commercial fishing fleet. Nevertheless, the majority of management decisions have wreaked havoc on the small-scale fishing operator and his crew and encouraged the consolidation of the industry.

Thus it is incumbent upon Congress, if it deems that the case for the maintenance of this sector has merit, to instruct the Councils through the Magnuson Act to maintain the historic balance of small-scale fishing operations and large-scale fishing enterprises. Such an action acknowledges that smaller operators have a life-long and generation-spanning commitment to fishing which makes them intrinsically the best conservators of the resource and the environment.

It is important to note that in seeking support for the small-scale fisherman, it negates the importance of other kinds of fishing enterprises, including factory trawlers and vessel owners and docks with large-scale operations. The SIU simply believes there is room for economic diversity. Because small-scale fishermen have been disproportionately hurt economically, the SIU believes Congress should codify a commitment to small fishing operations and family fishermen as a means to assure fair consideration of the needs and interests of this group in the implementation of conservation and management plans and ensuring they have a future within the industry.

It is time for Congress to act on this issue as every Council is wrestling with allocation decisions, sometimes termed the "on-shore/off-shore" debate. Guidelines for the Councils should be formulated on a national scale as the consequences of this policy has national implications on the employment of thousands of Americans, the status of national resources and the availability of an important product to the American public.

Currently, the findings recognize that "Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade..." [16 U.S.C.

1801(a)(3). Council management plans that wipe out the traditional independent small-scale fishing fleet eliminate employment opportunities, small businesses in related industries and change the character of hundreds of coastal communities, thereby belying the intent of the Magnuson Act.

Data available for 1988 indicates that 364,000 people in the United States were directly employed in harvesting and processing fish and shellfish. In the same year, another 90,000 people were directly employed in processing and wholesaling fish and shellfish (National Marine Fisheries Service, 1990). These people in the commercial fishing sector in turn support families, support hundreds of communities and create employment opportunities for hundreds of thousands of other American citizens.

Take, for example, the community of Point Pleasant, New Jersey. The 40 plus fishing vessels operating from this area provide direct employment for 160 fishermen. The activities of these boats generate work for 10 small trucking companies, 3 docks, 4 box manufacturers, 2 welding shops, 5 engine repair establishments, 2 boatyards, 5 electronics goods and repair shops (for radar, RAMS, radio) and 5 basic marine supply stores (nets and other gear). The fishermen purchase food for their 4-5 day trips from any one of 12 grocery stores. Their products are sold at 24 waterfront and near-waterfront restaurants, as well as several stores specializing in fish and shellfish. All of these establishments



capitalize on the fresh fish and shellfish, attracting customers from throughout the area while adding to the appeal of the area to tourists. The seafood harvested by the Point Pleasant-based fishermen is sold to wholesalers from Maine to North Carolina, who in turn sell it to restaurants, retail fish outlets and supermarkets throughout the country, including the Midwest and Rocky Mountain areas which have no ocean borders.

It is the fishermen and the communities of places like Point Pleasant that have the most at stake in the problems created by overfishing as noted in the Magnuson Act's findings. These fishermen have a stake in not depleting any resource as the their livelihoods and those of their children depend on the continued presence of stocks. While fishermen recognize they have a unique role in the preservation of the resource, they also feel they are now bearing a disproportional cost for conservation without any guarantees that they can recoup their costs. In fact, while bearing the costs of conservation which require significant investment and sacrifice, the fishermen have no guarantees that they will be in business in the future as any management plan can surface which will drive them out of business. Recognition on the part of Congress of the key role the small-scale fisherman plays in the industry is a step towards conservation.

## PROMOTING TRADITIONAL MIXED TRAWL FISHERIES

"Fishery" means, according to the Magnuson Act "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics" [16 U.S.C. 1802 (7)(A)]. While this definition should allow for the management of species in groups, the tendency of the Councils has been to promulgate one plan per species. On paper this may look good, however, it ignores the habits of the fish and the fishermen.

Species-by-species management ignores the fact that fish of different types share the same ecosystem and oftentimes are found together. It also ignores the way in which hundreds of fishermen -- both small-scale and large-scale -- have fished for generations. These fishermen, whether following the market or following seasonal fishing patterns, harvest the sea for a number of species. For instance, a Belford, N.J. or Point Pleasant, N.J commercial fisherman's total catch for the year might be made up of 10 percent fluke, 10 percent dogfish, 35 percent squid, 20 percent whiting, 3 percent porgie, 4 percent bluefish, and the remainder a combination of butterfish, cobia, eel, greysole, kingfish, ling, monkfish, redfish, sea robin, shad, skate and weakfish.

Comprehensive management plans which respect the traditional mixed-trawl nature of many fisheries need to be encouraged by Congress. Management on a species-by-species basis in some regions of the country leads to enormous waste and unnecessary complications. It forces fishermen who have been able to make decisions to not fish a resource if the stocks seemed low or if the price was not high enough to make decisions based on what can be fished under a management plan. It forces fishermen to move away from naturally occurring species assemblages available to them and to intensively target non-managed species, which can lead to an unnecessary decline in these stocks.

The single species management plan also has increased unsafe conditions for mixed-trawl fishermen. Small operators, dependent on weather conditions, who go out for a day to a week at a time, now make decisions based on what various management plans require. Single species management plans force fishermen to ignore weather conditions and to make decisions which endanger their lives.

Unless something is done, and done quickly, traditional fishing communities throughout the United States will be destroyed. If family fishermen, who developed a style of fishing going back generations and generations, are put out of business there will be significant economic dislocation and negative social and cultural consequences. In fact the very fabric of society of hundreds of coastal communities will come undone.

## THE ADMINISTRATION OF THE ACT

## Re-Emphasize Importance of "A National Program"

Ironically, the findings concerning inadequate fishery conservation and management practices and controls, which first were etched in law in 1976 and have had 17 years to be addressed, are the same [16 U.S.C. 1801(a)(2)]. The finding that "a national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources" is just as valid today as it was in 1976 [16 U.S.C. 1801(a)(6)]. In fact, thousands of fishermen would argue that a new national program is needed as the one in place has neither succeeded in preventing overfishing, nor has it rebuilt the stocks or insured conservation. Clearly, the management of the fishery resources of the United States by the National Marine Fisheries Service and its Regional Management Councils has done nothing to realize the full potential of the Nation's fishery resources.

## Regional Fishery Management Councils

The Magnuson Act lists the purpose of establishing Regional Fishery Management Councils to "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States" [16 U.S.C. 1801(b)(5)].

It is the position of the SIU that the Magnuson Act should be amended in the current process of reauthorization to give Congress the ability to charter an investigative commission as noted on pages 3 and 4 of this testimony because the Councils have failed to execute the responsibilities required of them in the Act.

The SIU believes it is in the interest of Congress to change the way in which the fisheries are managed. As a result of the fact that the Councils are not working, Congress is being asked to get more and more involved in matters which should be designated to NMFS and the Councils. In the past five years, Congress has had to independently enacted legislation dealing with the conservation of the Atlantic striped bass, the establishment of a three-year program to assess the

impact on fishery resources of incidental harvest by shrimp trawl fishery, the enactment of an amendment creating a North Pacific fisheries research plan and setting up a North Pacific Fishery Observer Fund. This is only the beginning if the situation continues as it is currently established. Additionally, fishermen -- both commercial and recreational -- and environmental groups are increasingly turning to the courts for fairness.

As it stands now the Councils allow the U.S. government to abdicate its responsibility to manage fishery resources in the national interest. The Councils act schizophrenically, becoming the petty baronies of so-called industry representatives and other interested parties. When those in the industry or the public lodge complaints that the process is not working, their fears are squelched with excuses that the industry and interested individuals were the ones who determined the program. Officials at NMFS, the agency which seemingly should exercise some control over the situation, refuse to be held responsible for the problems caused by the process, pleading their non-participation in the process and hiding behind the skirts of the Councils' decisions and plans.

The Councils have impeded progress and sound management. The Councils have moved far too slowly, and done so without meaningful participation from the very people who are regulated by Council plans.

Perhaps there are instances where the Councils have done their jobs. But the prevailing view of fishermen is that they have created an anti-democratic, unworkable process which is riddled with game-playing and dominated by bureaucratic concerns. The behavior of those involved can get profoundly petty -- expense reimbursement, the mailing of notices of meetings, and other issues such as these can divert a process and become the subjects of concern instead of addressing the sound management of the nation's fisheries.

Any fisherman who has taken the time to attend a Council hearing generally ends up feeling that the exercise was a worthless one. Comments made at hearings seem to have little impact on the plan the Council formulates. Fishermen feel they are in fact addressing a program that is a *fait accompli*.

The fisheries managers like to tell the industry that the Councils are an exercise in self-management. If the Councils are an exercise in self-management than it has turned out to be suicidal self-management. This is not good government.

There are many suggestions that the Council process would benefit from conflict-of-interest disclosure requirements on the part of Councilmembers. While the SIU believes that the maximum amount of information publicly available on the industry interests of Councilmembers is a good idea, the organization does not believe that this will solve the problems facing fisheries management.

In the immediate term, the SIU believes the management process would be well-served to increase the number of active fishermen on the Councils. The active fishermen on Councils should be compensated for lost fishing time. Additionally, the SIU recommends that more effective mechanisms be developed to encourage the meaningful participation of fishermen in the process. The lack of commercial fishing representatives currently involved in the Councils has led to promulgation of management plans which create perverse incentives and widespread economic hardship. The Summer Flounder Plan (Amendment No. 4) of the Mid-Atlantic Council stands out as an example of a program which makes no sense.

For example, the quota system of Amendment No. 4, which is justified on both shaky biological grounds and on an uncertain economic analysis, has harmed hundreds of fishermen along the East Coast. While summer flounder are practically jumping out of the water, these fishermen are not allowed to catch them. A key source of income for East Coast fishermen has been cut off needlessly. The little quota which was allocated to the States has been divided into thirds by state fishery agencies. Thus there is a winter, summer and fall season for fluke, creating a boom/bust market which depresses prices for fishermen when they can legally catch summer flounder and sends the market for fluke sky-high when the quota forces a shut-down of the fishery.



Fishermen have been practically forced to give the product away when the fishery is open, contradicting what the plan anticipated, which was high prices due to limited catch. Additionally, the plan has pitted small operators against larger vessel operators because the larger vessels can catch the full quota before small-scale fishermen have had a chance to harvest the fishery for any length of time.

Fisheries management plans should be flexible and swift when necessary. Strict requirements for definitions of overfishing and the need to develop so-called comprehensive plans, have the effect of delaying vital measures and allowing matters to reach a crisis point. Fishermen have time and time again called for a management plan, only to find they had to wait for years.

Some mechanism must be inserted in the process that allows fisheries managers to listen to fishermen when they tell the Councils that a stock, such as the Atlantic whiting or monkfish, is in trouble. Some mechanism is needed to allow fisheries managers to take quick, common-sense measures such as gear restrictions, age-at-entry controls and other means. Councils should be able to do this after the initial scoping and hearing process is finished, and when broad agreement about the problems and solutions is reached.

#### FISHERY MANAGEMENT PLANS

Section 1853 (3) lists the required and discretionary provisions of any Fishery Management Plan (FMP). The SIU has the following comments on some of the methods used for managing fisheries:

#### Allocations, Catch Quotas and Similar Programs

It should be a goal of the Act to insure that allocations, quotas, days-at-sea, or other methods proposed by the Councils to reduce fishing effort are promulgated in ways which are not biased towards operators whom have contributed most to depletion of the resource. Plans which include formulas which provide "y" numbers of days-at-sea for each "x" number of days fished in the previous 1, 2, or 3 years reward fishermen who have no regard for the resource and who have already benefitted most from exploiting the resource.

The Councils should be required to set equal allocations for all full-time fishermen who have been regularly employed in industry over a certain time frame. This is wise because it does not create incentives for persons to maintain maximum fishing effort today if they suspect their target fishery may come under a management plan in the future.

Further, plans which provide extra days for those who fish non-stop disadvantages union fishing boats and boats operated by enlightened owners

which provide for mandatory lay-overs between trips for their crews. Under some current management schemes, these conscientious operators have been or may potentially be put at economic risk when fish stocks are low, despite the fact that they have contributed significantly less to the depletion of the stock.

There should also be a general principle which allows for fishermen who have been harmed by certain management plans to gain such allocations, provided there are such that would otherwise go unused. Under all circumstances the right to allocate or reallocate these quotas or other limits should be retained by the appropriate Regional Council.

#### Protections Directed Towards Fishermen and Processors

##### Under Emergency Management Plans

An extension of the principal outlined in the points above, is that allocations made to full-time fishermen under emergency management plans be sufficient so that they may keep up with the basic expenses of maintaining their operations intact until the situation improves. Operators of boats often have mortgages to maintain and processors have taxes and other costs which must be paid even if not fully operational.

Whenever possible even minimal allocations should be made in order that these operators can have some income to meet these expenses. Under none but the most serious of crisis should a fishery be closed entirely. The best impartial scientific and technical information should be utilized to provide unbiased estimates of such a minimal allocation which would allow stocks to rebuild, while allowing the small operators and processors the ability to maintain their businesses until conditions improve.

Preferably, the government should look at such sacrifices in a similar light as it does in agriculture. It may well prove more cost effective to establish certain price stabilization programs, income support programs, or even outright subsidies, to regular full-time fishermen than attempting to fashion retraining programs or pay other social benefits to these workers when they are dislocated by conservation policies deemed to be in the public's interest.

Many imaginative solutions may be proffered to avoid these wrenching dislocations and shake-outs in the fishing industry, which tend to lead to concentrations in even more environmentally destructive and lower-employing corporate entities. For example, provisions could be made to offer boatowners and their crews opportunities to engage in fishery research projects which would provide similar income as if they were fishing.

Congress may also consider putting in place a program which allows fishermen access to funds resulting from fines leveled against marine polluters. These funds should not be tied directly to burdens of proof of harm, but rather placed in a general fund to provide financial assistance to those fishermen affected by public policy decisions.

Price supports may also efficiently replace lost income for fishermen who are restricted by quotas or reduced days-at-sea. Obviously, the market will provide part of this subsidy as prices rise in response to lower supplies of the product. However, the government should be willing to step in and guarantee the balance of a set price which will help the small and family operators survive through these emergencies. The current tariff structures on regulated fish products also deserves scrutiny. All too often, wholesalers simply turn to cheap imports in order to maintain supply, undercutting domestic prices at the very time when fishermen rely on additional money to help ease the pain of management decisions.

Finally, another program which deserves Congressional consideration is a buy-back program when Councils mandate changes in mesh sizes, special escape panels or other devices. As it stands, those in the commercial fishing sector are taxed twice by these policies. First, they must finance these expensive changes themselves, and second, they lose either through decreasing volumes of fish or increased time at sea in pursuit of this catch. Such a program should be financed

by all beneficiaries, i.e. the remaining harvesters and those in recreational fisheries who rely on charter businesses.

The bottom line is that quite often these family and small operators are asked to bear the costs of fishing policies deemed to be in the interests of society at large. There are also many safety and health regulations which are costly to the fishing industry. Reductions in effort mean for the small fishermen reductions in income, and today they are the only ones bearing the burden of protecting our marine resources for the benefit of society as a whole.

#### Saleable Quotas or Allocations

This is a critical matter to the survival of the family and small fishing operation. These "market" devices virtually guarantee the elimination of small fishing operations over the long run. Further, they act to create an ethic of fishing as purely a business which must produce at the bottom line.

Allowing sales of quota allocations by private individuals not only robs the public treasury from much needed funds, it is harmful to the future of the marine ecosystem and sustainable fisheries. It encourages people with no ties to the sea, such as investors and bankers, to enter the industry not to derive income from the

harvesting of fish, but rather by speculating on a market of limited permits themselves.

Of course, when these investors possess these permits, they expect the fishing operations they oversee to produce profits. This means getting as much of the resource as possible, while cutting labor and increasing the deadly efficiency of the operation, sacrificing safety at sea and conservation programs in the process. Further, as allocations are fixed in any given year, these types of programs lead profit maximizing firms to engage in environmentally destructive practices such as "high grading," that is the practice of throwing small, less valuable fish back into the sea dead in order to get the maximum value of the quota.

The SIU believes that the only economic incentive for entering the fishing industry should be the desire to earn one's living at sea. Today, however, current management practices such as this are creating perverse incentives which keep people who might otherwise exit this industry out at sea and fishing hard. They do so in the hope that someday they might wind-up with a tremendous windfall in terms of a saleable, transferable quota. Such practices hurt conservation both now and in the long-run. It is in the best interests of this nation to maintain those persons whose whole future is tied to the resource in the industry, as they are the ones who will be the best stewards of our fisheries.

Unfortunately, under saleable, transferable quota systems, fishermen who are given low allocations insufficient for maintaining mortgage payments and other costs, are virtually forced to sell their share to salvage something from their years of work. These tend to concentrate in large corporate entities and create insurmountable barriers to entry for young fishermen seeking to enter the trade.

The Surf Clam plan currently in force on the Atlantic coast exemplifies this process better than any hypothetical example. Currently, it is estimated that the entire allocation is controlled by no more than four entities, led by the giant conglomerate Borden, Inc. Consumers, of course, suffer under such oligopolies and monopolies. Further, the number of fishermen in this industry has shrunk by half. (See Appendix III.)

Saleable, transferable quotas are detrimental to employment in the industry, as well as future conservation efforts. The goal of maintaining small operations virtually eliminates saleable quotas as an alternative. The SIU believes that before any new management plans which call for such measures are instituted, Congress should call upon the General Accounting Office, or any other qualified body, to thoroughly investigate the effects of the Atlantic Surf Clam plan saleable, transferable quota.



As stewards of the public's interests, Congress needs this information if it is to make wise public policy decisions. The SIU is confident that such impartial review will demonstrate the frivolity of freely giving away these public resources.

#### THE CONCEPT OF "BEST SCIENTIFIC" INFORMATION

The SIU urges that the data provided by fishermen be considered and characterized as "reliable data." As will be discussed in the section of scientific information, fishermen's data often is dismissed as anecdotal. Yet, there is no group of people better qualified to provide information on fish and shellfish stocks and behavior. Often, the information of fishermen goes back for generations. (See Appendix V.)

A Magnuson Act finding notes that the "collection of reliable data is essential to the effective conservation, management and scientific understanding of the fishery resources of the U.S." [16 U.S.C. 1801(a)(8)]. Reference should be made that reliable data includes the experience and decades of information fishermen can provide.

The SIU recommends a change to 16 U.S.C. (c)(3) which says it is the policy of Congress "to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available;

involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish; and is workable and effective."

The "best scientific information available" [16 U.S.C. 1851(a)(2)] should be expanded to include the data available from those who have daily and first-hand contact with marine life -- the fishermen. It should be noted that under current practice "best scientific information" is often garnered through small samples or is based on out-of-date material. In the case of the fluke plan, the scientific committee discarded a recent plan which came to a conclusion it did not like and used an outdated study. Best scientific information also has ignored the impact of pollution. Fishermen believe the fish kills in the Atlantic, during the 1988-89 period had a great deal to do with the drastic decrease in summer flounder. Yet NMFS refused to consider any such data, it was discovered by a fisherman who read an article on the subject and who made a Freedom of Information Act (FOIA) request of the agency.

## THE CONCEPT OF "ECONOMIC EFFICIENCY"

"Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose" [16 U.S.C. 1851 (a)(5)], says the Magnuson Act.

Economic efficiency has been a code phrase for the perpetration of all sorts of schemes which put small and family fishing operations out of business. In the same way in which it can be argued that in the agricultural sector that the size of an operation is not the determining factor in efficiency, the same can be said for the fishing industry. Whether family farms or corporate farms are efficient is largely due to governmental policies [insert other].

Nor do small or family operations halt the advent of technology, render an operation immediately outdated. The capacity for change among small fishing operations is great -- whether mandated by government policy, market forces or fads.

At the very least, the Magnuson Act should be amended to define economic efficiency as broadly as possible. For example, maximum employment opportunities should be one of the criteria for defining economic efficiency.

Additionally, small and family operations are likely to have less damaging effects on the environment. It could be argued that in this case economic efficiency is similar to environmental efficiency as smaller operations cannot deplete a resource as quickly as a large scale operation.

## PENALTIES AND ENFORCEMENT

The SIU recommends that all enforcement [16 U.S.C. 1861] be transferred to the cops of the seas -- either the U.S. Coast Guard or state agencies which serve as marine police. The National Marine Fisheries Service should get out of the business of enforcement. If highway departments can leave the enforcement of laws to police, so can NMFS. Being the cop on the beat has a negative impact on the agency's ability to build consensus within the industry and to foster cooperation. It is not a sound management practice to delegate to the same agency the role of enforcement when it also has the job of conservation and promotion. While NMFS must create the rules, it can delegate enforcement to another agency and establish a system of justice that is truly fair, unlike what exists at this time.

As it stands now, enforcement is not working. All too frequently, from all around the country, there are heard stories of seemingly arbitrary enforcement of

Magnuson Act provisions and of penalties so high as to drive fishermen out of business. The SIU does not believe that conservation measures designed to reduce fishing effort should be enforced by bankrupting otherwise hard-working fishermen.

In regard to unlawful behavior and penalties [16 U.S.C. 1857, 1858, 1859, 1860], it must be recognized by both the Coast Guard and NMFS that these small operators are expected not only to earn a hard living for themselves, but also keep abreast of a dizzying array of regulations, rules, and plans. Fishermen today virtually needs to maintain a fleet of lawyers to keep them apprised of new safety and health rules, management plans, commercial restrictions, area closures, mandated and banned equipment, etc.

Leniency must be built into the law, and it must be mandated uniformly. Too often, these problems arise because of uneven enforcement of the laws, with some regions being particularly harsh and authoritarian. The NMFS today acts as police, judge and jury. Any fishermen faces a situation where the enforcement officer and Administrative Law Judges have close relationships, and some of these officers have never lost a case before these ALJs.

A person charged with violating management plan restrictions or other regulations is often told that by not pursuing his or her claim, he or she can get a modest reduction in the penalty. However, those that try to pursue avenues of

justice face greater fines and other penalties, and must go through three expensive and time consuming stages within the Fisheries Service and Commerce Department before they can have their case heard by a jury of their peers. Needless to say, this avenue is seldom taken. People in this industry deserve an independent tribunal before which they can argue their cases.

Also, a better balance needs to be found between penalties which amount to "death penalties" and those which can be considered the "cost-of-doing-business."

#### ADD HABITAT CONSIDERATIONS TO FISHERIES MANAGEMENT

The SIU recognizes overfishing as one of the causes for the decline in fishery resources and that the issue of habitat degradation have not been fully explored. Recent study at the Northeast Fisheries Science Center shows that water pollution directly contributes to the mortality of embryonic and young Atlantic Mackerel, Winter flounder and other species.

It is time for Congress to give Management Councils the tools they need to both protect habitat and to make those responsible for habitat degradation bear a

share of the costs of rebuilding the stocks. Today, all those costs fall solely on the backs of the fishermen.

It is time for this to stop. Marine biologist are well aware of the problems caused by loss of wetlands by coastal developers; the problems of nutritional overload and toxic algae blooms which result from agricultural run-off and human sewage dumping; damage from industrial toxins and heavy metals which are either dumped or washed into streams, bays, and the ocean itself; among other factors.

All of the above vitally effect the ocean's productivity and hurt the fragile ecosystems on which the nation's citizenry relies. Even the loss of the Earth's ozone layer is projected to have devastating effects on the most basic part of the ocean's food-chain, the plankton.

Congress needs to approach the Councils to find out what tools they need to help address this vital component of fisheries management. Further, it must give other relevant agencies the funding and tools they need to prevent this type of damage and to mitigate the effects of existing pollution and habitat damage. Finally, stiff fines and penalties need to be strictly enforced against those who harm our nation's marine resources and this money must be directed back into the fisheries to help further our understanding of these effects and to financially aid fishermen harmed by habitat degradation. (See Appendix I and Appendix II.)

## FINANCIAL RELIEF TO FISHERMEN

Much to the credit of the U.S. Congress, it took seriously the crisis which faces those who risk their lives harvesting marine resources when it passed the Commercial Fishing Industry Vessel Safety Act in 1988. This industry was, and remains, one of the most dangerous occupations in this country.

It is unfortunate, however, that as implementing regulations have come on line over the past few years, they have coincided with growing resource problems and management measures which act to restrict the incomes of those in the fishing industry. As a result, many are faced with intolerable choices between safety and economic survival. This is a choice which no one should be faced with.

The SIU strongly supports measures such as the regulations requiring vessel owners to possess life-craft, fire-fighting equipment, alarms, survival suits, etc. But we also recognize the expense to the smaller operators who are even now teetering on the brink of bankruptcy. The SIU strongly believes that even in these tight budgetary times, the U.S. government needs to find a way to help those individuals come into compliance with the Act, even if it means providing low interest loans or even grants to deserving applicants.



Knowing that no money currently exists for such a program, the SIU suggests that Congress seriously investigate some of the current programs under which such a project may be funded. Alternatively, perhaps the concept of a "windfall profits" tax on suppliers of such equipment, who have a large, captive market, be looked into.

Perhaps the United States government should explore a system such as that used by the European Community (EC) in which reference prices are established. The Department of Commerce notes that in the EC, when the import price of a species, such as squid or dogfish, both of which are popular in Europe, falls below the reference price, the EC can take steps to reduce imports by levying taxes that raise the price of the species.

Such tariffs can raise funds which would be allocated to displaced fishermen who face financial hardships due to the consequences of implemented management plans. Because management plans can drastically reduce the amount of domestic catch on the market, thereby affording imported products a window of opportunity to capture U.S. market share and depress prices, it would be fair to set tariff levels at certain prices on imported seafood which has supplanted traditional domestically harvested and produced fish and shellfish. (See Appendix IV.)

## FISHING ON THE HIGH SEAS --

## FOREIGN FISHING PRACTICES AND INTERNATIONAL TREATIES

The finding that "The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen" [16 U.S.C. 1801(a)(3)] is no longer the case.

The Magnuson Act has succeeded in its original purpose -- to prevent foreign interests from dominating the fishing industry off the coasts of the United States. "... the foreign catch in the U.S. Exclusive Economic Zone (EEZ) (a contiguous area extending seaward 200 nautical miles off the coastline in which the United States has exclusive management authority over all its marine resources, has declined to the point where it represented in 1991 only 0.3 percent of the total catch.

The SIU fully supports the principle that America's coastal waters and resources should be managed and governed in a way which benefits U.S. citizens. Additionally, as the standards maintained by the U.S. government for these waters are more often than not much more stringent than any kind of management of the fisheries on the high seas or in other nation's coastal waters, the SIU supports the efforts of the U.S. government to negotiate expanded fishing opportunities for a U.S.-flag fleet.

The SIU believes the United States must commit itself to being a full and constructive participant in the realm of international fishery management. Aside from the joint management of straddling stocks with the nation's neighbors to the north and south, the U.S. must also fully commit itself to support good management of the world's high seas fishery resources.

To this end, the SIU encourages the U.S. government to continue to work with and the Food and Agriculture Organization (FAO) of the United Nations in its efforts to manage fishery resources in international waters. Clearly, such management is not possible without help in scientific research, data collection and cooperative agreement. Most importantly, the United Nations must aid the FAO in its attempt to control runaway-flag fishing vessels.

Runaway-flag fishing vessels, registered in the flag-of-convenience ship registers of Vanuatu, Panama, Liberia and others, which are owned by citizens of nations which have strong fisheries management practices and who are seeking to escape the safety conditions and conservation rules of those countries, are found in increasing numbers on the high seas. The nations of the flag-of-convenience registers are not likely to be parties to any of the multitude of international conventions governing fishing practices (e.g., IATTC, ICCAT, NAFO, etc.).

In the United States, this practice is evident on the part of some of the tuna purse seine fleet, which at one time operated from Southern California. The U.S. purse seine tuna fleet, which has declined by about three-quarters in just over a decade, has had many of its vessels recently transferred to flag-of-convenience registers. The lure has been the fact that those nations have no laws prohibiting the fishing of tuna near dolphin.

The problem is global. The number of these so-called regulation-jumpers, or so-called quota-jumpers, calls for international action and the effective use of trade sanctions against nations which allow unlimited registration of fishing vessels, but which do not require any compliance with international fishing treaties.

These pirate fleets are today fishing on common stocks side-by-side with vessels from nations that practice sound resource conservation. While the runaway fishing ships can ignore restrictions on mesh size or gear or other forms of fishery management and conservation, they compete with the ships of law abiding American, Canadian and other nations' fishermen. Examples of stocks which are now subject to the rapacious practices of runaway-flag fishing fleets are the North Atlantic cod, U.S. and Canadian salmon, swordfish, all tuna and other highly migratory species.

## PROMOTION OF U.S. FISHERIES PRODUCTS

The findings of the Magnuson Act also call for the development of fisheries which are underutilized or not utilized by the United States fishing industry [16 U.S.C. 1801(a)(7)]. The one specifically mentioned as an example -- bottom fish off Alaska -- has been successfully developed. But hundreds of other fish and shellfish species are awaiting the conversion of the American palate. The finding notes it "is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby."

The National Marine Fisheries Service and the Department of Commerce could do much more to promote American fish and shellfish. The U.S. Department of Agriculture has attaches at various embassies around the United States to promote American farm products. Perhaps these representatives of the United States should also be assigned the task of promoting American seafood. Government give-away programs such as "Food for Peace" and other food-aid allocations should include American fish and shellfish -- either fresh, frozen or canned.

"Buy American" programs should cover U.S. harvested and processed fish and fish products.

There is room in this regard for balancing the amount of fish imported to this country with fish and shellfish exports. Currently, imports of fish and shellfish outpace exports. The value of edible imports in 1990 was \$5,233,000,000 compared to exports of \$2,779,000,000. This represents an improvement as in 1987 the United States imported \$5.7 billion in fish and shellfish products and exported \$1.58 billion. The narrowing of the gap is due to the advent of domestic production of "surimi," a fish paste made from pollack caught in the Pacific Northwest. Surimi is exported in great quantities to Japan.

There are many underutilized species -- mackerel, hake and Gulf butterfish. According to the Commerce Department Atlantic mackerel needs improved processing methods before it will win consumer acceptance. This is but one area where the U.S. government can invest in growth opportunities for the future.

The SIU urges that funding be restored to the Saltonstall-Kennedy funding for research of uses for underutilized species.

## CONCLUSION

The SIU and its member fishermen again thank the Subcommittee on Fisheries Management for holding this hearing and considering the issues presented in this testimony. The union and its rank-and-file look forward to working with the

members of the subcommittee and other interested elected officials and organizations in a coordinated effort to make the Magnuson Act work in the national interest.



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**CRITICAL ISSUES AND REFORMS IN THE REAUTHORIZATION OF THE  
 MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT**

***Testimony submitted by the Environmental Defense Fund***

***to the***

***Subcommittee on Fisheries and Wildlife Conservation  
 and the Environment***

***of the House Committee on Merchant Marine and Fisheries***

***United States House of Representatives***

***April 19, 1993***

***Note: The Environmental Defense Fund is planning to  
 submit additional comments on the reauthorization of the  
 Magnuson Fishery Conservation and Magnuson Act within 30 days.***

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**CRITICAL ISSUES AND REFORMS IN THE REAUTHORIZATION OF THE  
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT**

By Rod Fujita, Ph.D., Senior Scientist; Doug Hopkins, J.D., Senior Attorney;  
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**ISSUES AND COMMENTARY**

The Magnuson Fishery Conservation and Management Act (MFCMA), enacted in 1976, was intended to foster the conservation of dwindling fish and shellfish resources through the application of management principles based on science enrooted in conservation. Although some actions by regional fisheries management councils have enhanced conservation of stocks, concerns over the social and economic impacts of fishery conservation measures have tended to dominate the deliberations of the councils and to have undue influence on the exercise of authority vested in the Secretary of Commerce. In the following comments and proposals, EDF identifies, in a preliminary fashion, critical issues and specific reforms which should be incorporated into the reauthorization of the MFCMA.

Contrary to the intent of Congress, the MFCMA has been administered largely to provide short-term economic benefits to the fishing industry, without proper regard for the nation's interests as a whole. *The implementation of the MFCMA by regional fisheries management councils and federal and state fisheries agencies has been characterized by undue influence from stakeholders with short-term economic interests at the expense of long-term sustainability of the nation's fisheries and the ecosystems that support them.* A result has been implementing policies lacking in sufficient prudence and risk aversion given the many scientific uncertainties surrounding fish stock dynamics. Moreover, management policies have not adequately accounted for the ecological implications of the selective and on-going harvest of large quantities of fisheries resources.

The result has been a plethora of fisheries problems, including overutilization, stock declines, decreases in fishing income, and loss of fisheries-related jobs. Fifty-seven of the 200 assessed fish and shellfish stocks in federal waters have been overutilized; i.e., more fishing effort has been expended than is necessary to harvest the potential yield. Over-capitalization, open access fisheries, conflicts of interest in policy making, and other factors have translated into the severe diminishment of several important fisheries, including New England herring and groundfish, Gulf of Mexico king mackerel, Atlantic bluefin tuna, ocean perch in the Pacific Northwest, and billfish in the Atlantic and the Pacific. Unsustainable exploitation of stocks occurred in many cases in the absence of good scientific stock assessments and understanding of stock dynamics. *Good fisheries management as described in the MFCMA, based on science and enrooted in conservation, would dictate the establishment of conservative and quantified allowable catches to reflect scientific uncertainty and the highly variable nature of many fisheries resources. In many cases, regional councils and the Department of Commerce acceded to the short-term demands of some elements of the fishing industry and of individual fishers for increased allowable catch and open access in an effort to preserve jobs and fisher income. Ironically, the resulting compromised measures to protect stocks have led to reduced landings, less profit per fisher, and significant job loss.*

The upcoming debate over the reauthorization of the MFCMA offers Congress an opportunity to address the serious problems. The major marine fisheries conservation and management issues with which Congress should be concerned during the upcoming MFCMA reauthorization debate include the following:

◆ Total Allowable Catch (TAC)

➤ Stock assessment and sustainable yield determinations:

The MFCMA does not define optimum yield and overfishing precisely enough; broad discretion is given to the Secretary, and de facto to the Regional Councils, to define these all-important terms. While the MFCMA specifies that optimal yield is the maximum sustainable yield as modified by relevant ecological, social, and economic factors, in practice disproportionate weight has been given to social and economic factors, whereas ecological factors are

rarely taken into account explicitly. A direct and unqualified statutory requirement to conserve fish and shellfish stocks is needed in the MFCMA, defined in terms of maintaining the viability of these stocks as well as protecting the integrity of the marine ecosystems of which they are a component. *Explicit requirements leading to the setting of minimum ratios of fishery mortality to yield, and of minimum levels of residual spawning biomass, should be incorporated into the Act's definitions and procedures concerning maximum sustainable yields for each target fishery. While maximum sustainable yield is heavily interrelated with social and economic factors, it cannot be viewed in its fundamental form as being determined by such factors. It is essentially a biologically and physically determined phenomenon.*

➤ **Ecological and genetic diversity:** *Fisheries stocks, marine ecosystems, consumers, and the fishing industry would all benefit if stocks were allowed to recover – marine reserves can help obtain these benefits. Higher yields could potentially be realized in the long term by reducing allowable catches so as to foster recovery. Marine fisheries reserves demonstrably increase fish yields, size, and fecundity both within their boundaries and in adjacent areas or along migration routes, depending on the nature of the stocks, the design of the reserve, relevant environmental factors (e.g., pollution or other forms of habitat degradation), and the level of compliance. Reserves offer a simple and relatively easily enforceable alternative to, or useful complement of, restrictions on gear types, time on the water, catch, and access.*

➤ **Fishery management units:** *Effective fishery and ecosystem management will require further refinement in definition of the units which are the subject of programs developed under the Act. Mixed fisheries and multiple target species require joint management to avoid damaging outcomes such as by-catch disposal and decimation of nursery grounds. Interactions among species, a component of ecosystem relations supporting fisheries stocks, must be considered. Geographically distinct units of the same species, such as those of the Pacific salmon, frequently require distinct management programs. These kinds of complexities, embedded in the target fishery's role in its ecosystem, must be incorporated in specifying sustainable yields and harvest methods.*

◆ Allocation of TAC to fishers

➤ Lack of conservation incentives is a key cause of overfishing: *Historical open access, premised upon a common property view of fisheries, is no longer a viable policy for most fisheries. Government subsidies, such as various tax incentives, have contributed to this overutilization of fisheries resources* by aiding in capital-intensive investments which, in turn, have contributed to the decline of traditional, less intensive management systems based on open access to fisheries. These and more direct subsidies for dock construction and discounted use fees, uncompensated Coast Guard support services, guaranteed loans for high-risk ventures, and others should be re-examined in light of their unanticipated effects.

➤ Property rights to harvest fish should be clarified: While community-based co-management systems have proven successful in some cases, they may not be applicable to all fisheries and may depend upon a tradition of cooperation, fairly homogeneous fishing operations, a relatively small number of fishers, and a management body with very clear authority to manage the resource. *The privatization of fisheries, implemented with a clear definition of property rights coupled with transferability of those rights, offers a potential means to increase economic efficiency, match capital expenditures and equipment to the sustainable harvest level, and create incentives to protect stocks in the long term in some types of fisheries.* Ideally, elements of both approaches to management will be used to empower individuals and communities to affect fisheries management, ensure an equitable allocation of quotas in ITQ programs, and create incentives (both economic and social) for responsible management and self-enforcement.

➤ Tradable fishing rights (ITQ's) have significant potentials: Although limited access fisheries and associated management tools such as individual transferrable quotas (ITQs) are not precluded by the MFCMA, the fact that they represent a fundamental departure from the status quo and are rapidly evolving in the U.S. and other countries demands a high level debate. *Certain aspects of the debate over the wisdom of privatizing fisheries resources through ITQs or other mechanisms, such as the introduction of competitive bidding for fishing rights and the imposition of user fees to offset management costs, should be given special attention in discussions over how to improve the MFCMA.*

➤ **Implementation of ITQ's will require explicit legislative authorization:** While not prohibited by the current Act, the implementation of ITQ's on a broad scale will likely require explicit authorizations in the new Act. This is due to several factors, including first the need to set TAC's as quantitative goals, and limits, for harvest in each fishery. In addition, *the difficult task of partitioning a fishery's TAC into ITQ's to be allocated among commercial, sports, and aboriginal fishers may best be accomplished with clear legislative guidelines.* Such was certainly the case with the allocation of sulfur dioxide emissions allowances within the reauthorized Clean Air Act in 1990, a policy initiative which has some similarities to those involving ITQ's as a fisheries management tool.

➤ **TAC-ITQ relation alternatives:** Since TAC is a biologically dynamic concept, its quantification cannot remain constant. *As TAC changes, so to must the resultant fish harvest rights embodied in ITQ's.* In order to facilitate this changing harvest value in ITQ's, two similar but different approaches are as follows (there may be other options as well):

■ **Proportional ITQ's:** Quantitative rights to harvest biomass must vary over time as TAC assessments are revised and improved. *Under a proportional ITQ structure, each ITQ constitutes a share or percentage of total TAC for any given season or year.* Thus, downward adjustments in TAC reduce harvest rights embedded in ITQ's without compensation. In the event that expansion of TAC becomes feasible, one of two outcomes are possible: (i) increase the ITQ's harvest right value, or (ii) distribute additional ITQ's by selling or auctioning them to generate revenues which could be used to compensate or offset reductions in ITQ harvest values.

■ **"Firm" and "Non-firm" ITQ's:** In order to reflect the changing and uncertain nature of TAC, *ITQ's could be classified or partitioned into various degrees of "firmness" – firmer meaning harvest rights are less uncertain, less curtailable when TAC is reduced.* This concept is similar to that by which western water rights are prioritized by seniority (i.e. junior rights get cut first in dry years). The "firm" level is one that fishers can expect with certainty each year -- within the biological limits of TAC -- and which constitute a very risk-adverse estimate by fisheries regulators of sustainable harvest rates (including both ecological and populations factors). The non-firm

component would be available to fishers pending further scientific information on TAC, and would be adjustable as ecological and population dynamics are better understood. If adjustments downward in TAC become necessary, these non-firm quota rights would be reduced without compensation. Tradability of ITQ's of different firmness would imply differing market prices reflecting this risk.

Should it be necessary to reduce TAC beyond "non-firm" rights to include retiring some of these "firm" rights, then compensation would be required, much in the way that fresh water acquisitions for the environment are beginning to occur. In developing a compensation-based capability to undertake such acquisitions, user fee-based systems to provide revenues for "sustainable yield" funds should be explored. These funds can be managed for acquiring/retiring firm quota, and for assisting in fishing industry adjustments. Precedents in other fields, including water and energy, for such funds exist. *These arrangements facilitate equitable risk-sharing between industry and ecological concerns by avoiding either a totally firm (ecologically inequitable) and a totally non-firm (fisher inequitable) basis for quota definition.*

➤ Additional benefits of ITQ options: (1) The quantification underlying *ITQ's explicitly establishes conservation targets*, thereby making operational at the fisher level a central concept in the MFCMA; (2) the difficult and on-going task of government to allocate harvest rights is alleviated, and *regulatory resources are freed up for enforcement and other duties*; (3) ITQ's provide clarification for fishers by *securing access and reducing uncertainty* surrounding investment and other economic decisions; (4) *ITQ issuance to entities other than individual fishers*, such as associations or communities, may be appropriate and practical in some circumstances.

➤ Key ITQ problems: (1) *High-grading* – sorting catch at sea to maximize quality of ITQ's used – *would be a problem with any quantity-based system, with or without tradability*. Options for regulations and/or incentives to discourage high-grading include mesh size; seasonality of fishing to coincide with periods of reduced need to high-grade; by-catch landing/reporting incentives; and seasonal ratios converting landed catch weights to at-sea weights. (2) *Underreporting of catch* (also a problem in any quantity-based system with or without tradability) *indicates the need for an enforcement*

*program which monitors and cross-checks product flow* (such as the current program in New Zealand); (3) *ITQ's, while market-based, would continue to require substantial regulatory oversight* due to various types of externalities resulting from fish harvest. For example, exercising ITQ rights in some fisheries at certain times could damage non-target species which may or may not be subject to ITQ systems. Regulations such as gear requirements, mesh sizes, or fishing seasons may be necessary to reduce these external effects.

(4) *Market power* – the domination of fishing rights by one or a few fishers – may be possible in some fisheries. This outcome can be avoided at least initially by allocating ITQ's among a number of fishers. Thereafter, monopolization of supplies from any particular fishery by acquiring a substantial share of its ITQ's could be regulated – should economic behavior of the fishers warrant it – under existing laws governing restraint of trade, price fixing, etc.

#### ◆ Implementation/Regional Councils

➤ Council membership composition: Changes in the makeup and operation of regional councils are needed to decrease imbalances in stakeholder interests and to prevent the making of policy before adequate economic and scientific analyses have been conducted. Imbalances in council membership leading to management policies which are not in the national interest remain, despite the adoption of amendments in 1986 and 1990 to address this concern. *Measures to decrease excessive influence by stakeholders with short-term economic interests at both the staff and council member levels are needed.*

*Consideration should be given to expanding council membership to include affected parties in addition to the fishing industry, such as environmentalists, aboriginal fishing communities, etc. Agenda 21, adopted by the United Nations Conference on Environment and Development, strongly recommends a participatory approach to fisheries management. Community-based co-management systems clearly work under some conditions, and should be encouraged.*

➤ National standards, underlying goals and definitions, and the Regional Councils: Section 301(a)(1) of MFCMA containing standards should be amended to place tighter constraints on regional council actions. Standards have been interpreted to equate conservation with facilitating management and optimizing yield in terms of economic or social benefit. In addition, courts have upheld agency interpretations giving councils great flexibility in managing resources. *EDF suggests below revisions in the national standards (16 U.S.C. Section 1851) intended to clarify the needed goal of the Act to set sustainable fish harvest limits, and then to allow maximum economic and social flexibility, efficiency, and equity within this necessary constraint.* Flexibility is one of the great virtues of the regional management approach embraced and defined by MFCMA; however, it can be and has been abused.

A related problem concerns the oversight duties of the Secretary of Commerce (the Secretary). For example, a recent court judgement (American Factory Trawler Association v. Knauss) indicates that the MFCMA may be flawed in that it allowed the Secretary of Commerce to conduct and use a cost-benefit analysis to provide post-facto justification for a regional council amendment to a fishery management plan (FMP). *The MFCMA should be amended so that the FMP's directly address the setting of TAC's based on biological factors, as well as the consequent economic and social factors and issues, based on the national standards.* Such changes would clarify the Secretary's review responsibilities by focusing them on determination of consistency of FMP's with the national standards.

#### ◆ Enforcement/Compliance

➤ Harvest limits must be verified in practice: *TAC verification is imperative to implement sustainable yield policies.* Monitoring of catch/product flow at approved landing sites and simultaneous reporting by fishers – a system being tested in New Zealand – should be seriously considered in reauthorization of the Act.

➤ Offset monitoring costs through other changes: Reduced at-sea surveillance – a decreased emphasis on the traditional "game warden" model – will help to free up resources for monitoring/documentation of catch. *User fees should also be authorized in the new Act.*



➤ **Penalties:** *The expected costs of being caught in violation of the Act should exceed the expected benefits.* Penalties in the form of stiff fines, revocation of fishing rights, and other consequences should be considered. Targeted investigations, bounties, and audits may be useful as well.

➤ **Incentives:** *Punishment strategies should be augmented, and replaced where possible, with incentives to comply.* For example, payment incentives to encourage by-catch landing, not dumping, associated with target species catch may be more effective in achieving some of the Act's goals.

## **MFCMA REVISIONS**

EDF has not completed an exhaustive analysis of the entire MFCMA at this time. The following proposed revisions are not intended to be a comprehensive statement of the Act's many needed reforms. Instead, the following are preliminary suggestions for additions or changes in several sections of the Act (MFCMA, as codified in the U.S. Code, 16 U.S.C. Section 1801, et seq.):

### ◆ **Findings, purposes, and policy (Section 1801)**

➤ **Finding:** Add at 1801(a): That disruption and degradation of marine ecosystems which sustain many fish stocks has occurred in part due to increasing fishing pressure and the inadequacy of some fishing practices and controls

➤ **Purpose :** Add at 1801(b): To protect and manage the habitats upon which sustainable fish stocks depend, and their supporting ecosystems,

➤ **Policy:** Add at Sec. 1801(c):

► To assure that the national fishery conservation and management program implements, where feasible, total allowable catch limits based on *quantified maximum yields which are sustainable indefinitely and which are determined by biological and ecological factors,*

► To assure that the national fishery conservation and management program provides for the *maintenance and restoration of the marine and freshwater ecosystems which support sustainable and genetically diverse fish stocks,*

► To support and encourage efforts by the United States to consummate *international fisheries treaties which include provisions to establish and implement total allowable catch limits based on biologically and ecologically determined maximum yields which are sustainable in perpetuity, and to maintain and restore marine ecosystems,*

► *To pursue the removal of government subsidies which encourage overexploitation of fish stocks and concomitant ecosystem degradation; and to pursue instead the implementation of user fees to encourage achievement of sustainable yields, reduce ecosystem damage, and provide revenues to defray program costs and create a trust fund to assist in implementing the program*

◆ Definition (Section 1802(21)): Revise section (B) definition of "optimum" as follows: Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, which is quantified according to the total allowable catch (TAC) from such fishery. *TAC is the amount of catch which, based on state-of-art scientific stock assessment methods, can be sustained in perpetuity and which is consistent with stable and healthy marine ecosystems within which the fishery functions.* TAC quantification must include parameters specifying a minimum allowable ratio of fishery mortality to harvest, and a minimum level of surviving spawning biomass.

◆ Exclusive fishery management authority (Section 1811): Replace 1811(a) as follows: Except as provided in section 1812 of this title, the United States claims, and will exercise through its appropriate and various agencies and in the manner provided for in this chapter, *sovereign rights and exclusive fishery management authority over all fish and supporting ecosystems,* and all Continental Shelf fishery and supporting ecosystems resources, within the exclusive economic zone.

◆ **Foreign fishing (Section 1821):** Implementation of maximum sustainable yields and TAC's through a quantitative harvest rights system such as ITQ's should *incorporate foreign fishing of these stocks into this system*. Since monitoring of product flows and their impacts needed to enforce an American TAC system will be difficult to implement for foreign fishers, it may be necessary to require the observer programs to monitor catch while within a fishery conservation zone. Agreements with foreign governments, either in bi-lateral agreements or as part of international fisheries treaties, will be helpful in this respect as well.

◆ **International fishery agreements (Section 1822):**

➤ Add at 1822(a)(4): (C) which *seek to establish sustainable and enforceable limits on biomass harvested from international fish stocks* and; (D) which *initiate programs for the co-management and maintenance of marine ecosystems which provide the life support for international fish stocks*.

➤ Add at 1822(b): The Secretary of State shall report to Congress within 90 days of the reauthorization of the Act identifying those *treaties and agreements in need of renegotiation under the new Act*, together with a renegotiation plan and projected time schedule.

◆ **National standards for fishery conservation and management (Section 1851):**

➤ Revise 1851(a)(1): Conservation and management measures shall *prevent overfishing by establishing and enforcing maximum sustainable yields and total allowable catch limits* for each fishery.

➤ Add at 1851(a): Conservation and management measures shall contribute to the *maintenance and restoration of the stability and health of marine and freshwater ecosystems* upon which each fishery depends.

➤ Add at 1851(a): To the maximum extent practicable, all *government subsidies* contributing to overexploitation of fisheries resources;

to degradation of associated ecosystems; and to inefficient fishing methods and investments *shall be removed. Systems of user-based fees shall be utilized to help defray program costs, to encourage increased efficiency among fishers, and to support a trust fund to assist in adoption to the terms and conditions of the Act.*

➤ **Revise 1851(a)(4):** Conservation and management measures shall not discriminate between residents of different States. *As it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) calculated to be consistent with, and contained within, maximum sustainable yields and total allowable catch limits established for that fishery; (C) based on the concept of tradable fish harvest quotas, or individually tradable quotas (ITQ's), wherein fishing privileges are assigned quantitatively to individuals, associations, communities, or other appropriate entities, and wherein these ITQ's are tradable among fishers at prices to be set by market forces; (D) conditioned upon prohibitions, limits, or requirements on the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate achieving and enforcing the goals of the Act at least cost; (E) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

➤ **Revise 1851(a)(6):** Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, associated marine and freshwater ecosystems, and catches.

◆ **Regional fishery management councils (Section 1852):**

➤ **Add at 1852(a):** *Each of the eight Regional Fishery Management Councils shall – in addition to the membership prescribed in this section – include two voting members representing ecological and environmental concerns. Both shall be marine and/or fisheries specialists; one shall be an employee of the U.S. Environmental Protection Agency, the other shall originate from a non-profit, private sector entity. Both shall be appointed by the Administrator of the U.S. Environmental Protection Agency.*

➤ Add at 1852(b): The two members representing ecological and environmental concerns as described in 1852(a) shall both be voting members.

➤ Add at 1852(h): Each Council shall submit a completed environmental impact statement under the NEPA at the same time as fish management plans are submitted to the Secretary.

➤ Add at 1852(j): Each Council shall require and facilitate maximum public access to information and consultations underlying decisions. *Closure of information and meetings to public access by a Council or its committees shall be explicitly justified in terms of national security or other reasons.*

◆ Contents of fishery management plans (Section 1853):

➤ Add at 1853(a)(1): (D) identified to provide a least cost means of achieving the policies and goals of the Act; (E) not dependent upon government subsidies for implementation; (F) consistent with the national standards provisions as enumerated in Section 1851.

➤ Add at 1853(a): *assess and specify the effect which conservation and management measures of the plan will have on stocks of naturally spawning anadromous fish in the region for those stocks with current populations of less than 50% of historic levels.*

➤ Remove from 1853(b) -- due to conflict with revisions in Section 1851 -- the following subsections: 1853(b)(3); 1853(b)(4); 1853(b)(6)

◆ Action by Secretary (Section 1854):

➤ Remove from 1854(d) the following: *The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.*



# ALASKA CRAB COALITION

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Statement of Mr. Arni Thomson  
Executive Director  
Alaska Crab Coalition  
Before  
Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries  
U.S. House of Representatives  
April 21, 1993

Mr. Chairman:

I would like to express the appreciation of the Alaska Crab Coalition ("ACC") for the opportunity to provide a statement for this important hearing. The ACC played a significant role in the development of the 1990 amendments to the Magnuson Fishery Conservation and Management Act and looks forward to making a constructive contribution to the current reauthorization process. The ACC believes that the enactment of the 1990 amendments, including particularly the North Pacific Fisheries Research Plan, led to improvements in our system of fisheries management. However, the ACC feels that the nation is still some distance from achieving the goal of ensuring that our valuable fishery resources are utilized in a responsible manner.

The Alaska Crab Coalition, a trade association comprised of the owners of more than sixty-five crab fishing vessels which operate in the waters off Alaska, has a record of strong support for responsible fishing. Our members experienced the costs of declining Alaskan crab resources in the early 1980's and the benefits of restored crab fisheries in the years that followed. The Members of the ACC know what economic losses are associated with the excessive levels of crab bycatch in the groundfish trawl fisheries of the Bering Sea and Gulf of Alaska. We are also conscious of the economic waste resulting from the massive discards of target species in those fisheries. Thus, although there are forces at work in the marine ecosystem that are beyond the reach of human intervention, there is much that can and should be done to ensure that fishing gear and practices are employed in responsible ways.

We believe that it is time for the federal government to face up to some facts. Americanization of the groundfish fisheries of the Bering Sea, although a laudable goal and a great achievement, was not without risk, and did not come without cost.

For example, the Bering Sea crab pot sanctuary, long closed to foreign trawlers by international agreement, was opened to American trawl vessels with the aim of stimulating the growth of our bottom fishing industry. Unfortunately, the protection of that most critical nursery ground was sacrificed. The American trawl industry took full advantage of the opportunity to harvest bottomfish, but at the same time, inflicted substantial damage on now severely depressed crab resources. Notably, Russia has long maintained bottom trawl closures in critical habitats of the Sea of Okhotsk, and has been rewarded with a rich abundance of valuable king crab.

In the United States, the pendulum has swung too far in the direction of development of the Bering Sea factory trawl fleet. Federal managers must no longer permit, much less encourage, bottom trawling, when the affected bycatch species are in such poor condition that directed fishing is either prohibited or severely restricted, as it continues to be for king crab. This is not primarily an issue of allocation, as some in the trawl industry would have the public, the Congress, and the Administration believe. Rather, this is first and foremost a matter of conservation.

Federal managers must also face up to the fact that the Bering Sea factory trawl fleet, which they have long nurtured, engages in fishing activities that are not only wasteful of bycatch species. The use of trawl nets, for which there are no mesh size restrictions, results in high volume discards of target, as well as non-target, species. In 1991, according to the National Marine Fisheries Service, total pollock discards in the Bering Sea directed fishery for that species were 245,400,640 pounds. Of that amount, large industrial factory trawlers accounted for 85 percent--approximately 209,000,000 pounds. These total discards were equivalent in weight to about six times the entire commercial harvest of salmon in Washington State, or to the entire combined commercial harvest of herring, halibut, and shellfish in Alaska, during 1990.

Furthermore, it is reasonably estimated that, in bottom trawling operations, the "unobserved" bycatch of crab is ten-to-fifteen times the bycatch found in the nets. It is assumed that the mortality of crabs crushed beneath the non-capture parts of the trawl gear is very high. That mortality likely exceeds the levels experienced in the nets.

Underwater camera observations of the operation of bottom trawl gear leads many experienced fishermen, scientists, and other informed observers to conclude logically that slow-moving bottom dwellers, such as crabs, are unable to evade trawl gear moving at speeds of three-to-four knots. Gear damage to juvenile "pods"--as many as 10,000-20,000 juveniles will mass together for predator protection--can have a devastating impact. Trawl gear damage to king crab during the soft shell molting season is also recognized to be severe. It is extremely disturbing that the federal government is failing to manage adequately for these impacts. As far as research is concerned, the crab industry has committed more funding to the study of these problems than has the federal government.

The effect of bottom trawling on the benthic environment is also believed to be quite significant. Crab in the first instar stage of development find refuge from predators by crawling into the subsurface layer of the seabed. As the ACC pointed out in its 1989 congressional testimony on reauthorization of the Magnuson Act, bottom trawling in crab nursery areas may have a very detrimental effect on crab survival rates. The damage is a matter of particular concern, where the large nets and heavy doors and chains of industrial factory trawlers are used.

It is easy to understand why habitat studies are particularly important. The NOAA Outer Continental Shelf Environmental Assessment Program ("OCSEAP") has yielded useful data on the sensitivity of crab nursery areas. OCSEAP considers the North Aleutian shelf to be the primary habitat for king crab and is concerned about bottom trawling impacts. The Chairman of the North Pacific Fishery Management Council, in a letter to former President Bush concerning Lease Sale 92, also acknowledged that the habitat in that area is critical to crab, and to halibut, as well. The ACC finds it difficult to understand why federal fisheries management does not adequately reflect the singular importance of that habitat. The ACC believes that the NOAA Undersea Research Program should attach a high priority to habitat studies in this and other critical habitat areas. As pointed out below, long-term sustainable utilization is now an international standard recognized by the entire world community, and the NOAA program should be conducted accordingly.

Before leaving the subject of trawl impacts, a few clarifications are in order. The trawl industry maintains that all fishing groups, no matter what gear they employ, inflict bycatch mortality. That is true, but the impacts vary greatly among the gear types. Trawlers, by the nature of their non-selective gear, inflict mortality not only on their target species, but also on the target species of most other gear groups. Thus, trawlers impose direct costs on other sectors of the industry by reducing the immediate and future harvests of the other gear groups.

Fixed gear fishermen, employing pots or longlines, have little impact on non-target species. The bycatch of this gear, principally juveniles and females of the target species, represent foregone future harvests for responsible fishermen. Consequently, these gear groups have a vested interest in minimizing bycatch mortality through gear design and fish handling techniques, as well as through strict quotas and time and area closures. In sum, fixed gear does not impose direct costs on the trawlers' target species. Moreover, the bycatch mortality in the pot and longline fisheries is far below that experienced in trawling operations.

Of course, these are not the only problems facing the fisheries off the coast of Alaska. It is an unfortunate fact that rapid overcapitalization of major fisheries in the Bering Sea and Gulf of Alaska, as well as elsewhere in our Exclusive Economic Zone, has given rise to severe pressures on fisheries managers to permit levels of exploitation that cannot be reconciled with basic conservation principles. Furthermore, the National Marine Fisheries Service and the Regional Fishery Management Councils have felt compelled to dedicate their meager fiscal and administrative resources principally to the development of systems for the allocation of limited--and all-too-often declining--fisheries resources among competing sectors of our industry. In addition, special interest groups have succeeded in engineering the appropriation of scarce federal dollars to dubious purposes. The recent appropriation of \$300,000 to a fishermen's trade association is but one example. (See attached documents obtained pursuant to a Freedom of Information Act request.) It is little wonder, then, that the fisheries management system has failed to address conservation challenges in timely and effective ways.

The Committee should find it interesting that, in the international context, when our federal fisheries managers have been freed of the intense pressures of certain sectors of our fishing industry, conservation properly has been the center of attention. At the United Nations Conference on Environment and Development ("UNCED") in Rio, the United States Government played a highly constructive, leadership role in the articulation of conservation guidelines, principles, and commitments under the new rubric of "sustainable use". At a 1992 conference in Cancun, Mexico, the U.S. contributed importantly to the development of international standards of "responsible fishing". A report issued by the ACC and published by the American Fisheries Society on the landmark achievements of the Cancun conference is attached.

The ACC closely followed the work of UNCED on sustainable development of living marine resources, and participated actively in the Cancun conference on responsible fishing practices. Our organization applauded the results of those conferences. Several developments are worthy of particular note.

UNCED proclaimed that, "States commit themselves to the conservation and sustainable use of living marine resources under national jurisdiction". The Conference recognized "mounting problems" in the world's fisheries, including "overcapitalization and excessive fleet sizes...insufficiently selective gear, [and] unreliable data bases".

UNCED declared that, "[I]t is necessary to...promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species...[and] preserve rare or fragile ecosystems as well as habitats and other ecologically sensitive areas...." UNCED further declared that nations should "...[t]ake measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation...[and] [d]evelop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of environmental impact of major new fishery practices...." In designating protected



areas, "priority should be accorded, as appropriate" to specific kinds of areas, including "spawning and nursery areas".

The Cancun International Conference on Responsible Fishing declared that "States should promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize by-catch of non-target species." The Conference further declared, "States, in the design and subsequent introduction of new fishing gear and practices, should take into account qualified assessments of impacts on the sustainability of fisheries, giving due consideration to the specific characteristics and biodiversity of different fishing areas." "States should promote and enhance collection of data necessary for the conservation and sustainable utilization of fisheries resources." "States should take necessary measures to protect coastal wetlands and other areas of critical fisheries habitat from all kinds of degradation." And, "States should take steps to improve management systems as part of the practice of responsible fishing."

The Cancun Conference proclaimed that nations "recognize the principle of sustainable utilization of marine living resources as the basis for sound fisheries management policies. In this regard, they consider as one of the most important objectives the application of policies and measures which result in a level of fishing effort commensurate with the sustainable utilization of fisheries resources, taking into account the specific characteristics of particular fisheries."

The ACC believes that the Congress and our fisheries managers should provide for legislative and regulatory implementation of the key elements of the international consensus reflected in the Rio and Cancun declarations. It is true that general provisions of the Magnuson Act relating to conservation reasonably may be interpreted to be consistent with the new international guidelines, principles, and commitments. From that standpoint, an elaboration in the Magnuson Act of the central points accepted by the international community would not represent a departure from the basic framework of the prevailing domestic management system. However, experience has shown that the Magnuson Act could usefully be strengthened to provide our fisheries managers with greater leverage to achieve conservation objectives in the public interest.

Certain industry groups in the United States will not welcome the express inclusion in the Act of provisions reflecting the international consensus that was achieved under U.S. leadership. Those groups are likely to oppose the inclusion in the Act of a preference for selective fishing gear or other methods of avoiding the kind of excessive waste that is now experienced, for example, in the offshore groundfish trawl fisheries of the North Pacific. The ACC would like the Committee to recall that these same groups were strongly opposed to the North Pacific Fisheries Research Plan enacted in the 1990 amendments, a plan that is now almost universally recognized as indispensable to the achievement of basic conservation and management objectives in the multi-billion dollar fisheries of the Bering Sea and Gulf of Alaska.

The ACC will, at the appropriate time, submit for the consideration of the Committee specific amendments to the Magnuson Act. A selective fishing gear preference, improved conservation for sustainable use of living marine resources, and protection of fragile habitats, including spawning and nursery areas, will be among our objectives.

In addition, the ACC will propose amendment of the Act to include a National Standard requiring that fisheries management measures promote safety of life at sea. This is a vitally needed improvement to the Act. Fishing is, in many contexts, a dangerous occupation. Lives are lost in the federally managed fisheries each year. Sadly, some of our management measures actually contribute to the dangers encountered by our fishermen. For example, in the sablefish and halibut fisheries off

the coast of Alaska, lives are lost each year in a mad scramble by thousands of vessels to harvest the available resource in a matter of hours or a few days. The prevailing system of "fishing derbies" requires that, if fishermen are to earn their livelihoods, they must do so regardless of severe weather and sea-state conditions. Other fisheries, many of which are seriously overcapitalized, are experiencing varying degrees of the same problem.

Unfortunately, more humane systems of management are politically difficult to devise, as they involve some element of allocation of finite, and sometimes declining, resources. In the public debates and policy deliberations, safety issues tend to be lost, as the focus all-too-often, falls on purely economic considerations. The Act must be amended to ensure that the priorities of our fisheries management system accord with the fundamental values of our society. The protection of human life must come first.

The ACC also proposes that the Act be amended to include a prohibition on any fishery management measures that would have the effect of causing or contributing to overcapitalization in a fishery. We feel that the problem of overcapitalization is so serious and so widespread that it should be addressed explicitly and decisively in the Act.

There are further ways in which the Act can and should be improved. Controversy over allocation decisions cannot be avoided. However, industry and public acceptance can be strengthened. A means of achieving this, in the context of the fisheries off the coast of Alaska, would be to provide for a higher-than-usual level of agreement among the members of the North Pacific Fishery Management Council. Requiring a two-thirds vote for allocations that would depart from historical shares in a given fishery would certainly contribute to the confidence of the affected industry and the interested public in the fairness of the management system.

There may be other proposals aimed at restricting the authority of fisheries managers to limit access. However, the ACC believes that the full array of limited entry options should be preserved, including those of individual fishing quotas and license limitation schemes.

The ACC recognizes that it will not be an easy task for this Committee, the Congress, and the Administration to build upon the conservation-related provisions of the 1990 amendments and to bring the Act into conformity with the newly emerged concept of "responsible fishing" and new international standards of fisheries conservation and management. Nor will it be a simple matter to amend the Act to ensure that fisheries management measures contribute to safety and do not threaten it. Nevertheless, the ACC believes that our government will rise to the challenge, as in 1990, and that our nation will be able to look forward to the sustainable--and safe--use of a national treasure, our still vast fisheries resources.

## Northeast Fisheries Science Center

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### Research Highlights

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Office (NEROO) for the latter's use in responding to the spills. (For example, should dispersants be used to reduce oil damage to spawning areas?) The NEROO and other NOAA participants said the NEFSC's information and advice were timely and beneficial, and agreed well with that provided by Maine and Canada.

Contact Robert N. Reid, (908) 872-3000.

### Pollution Linked to Fish Embryo Mortality along East Coast

The problem of overfishing currently dominates management of the Northeast's marine fishery resources. If/when that problem is solved, another problem -- pollution -- will likely begin to dominate management. The NMFS Northeast Fisheries Science Center has recently published a paper in *Environmental Biology of Fishes* on the role of pollution in the direct mortality of Atlantic mackerel embryos, and in the indirect mortality of early life stages of Atlantic mackerel, windowpane, and winter flounder due to contamination of adults of these species prior to their spawning.

There appears to be a threefold increase in the mortality of Atlantic mackerel embryos, and in the mitotic (cell division) error of adult windowpane and winter flounder, from the least-polluted to most-polluted sites in the Northwest Atlantic. This threefold increase suggests that pollution, operating through chromosomal abnormality during egg production and embryo development, may account for a significant portion of early life stage mortality in the most-polluted locales.

The article, "Pollution and Developmental Abnormalities of Atlantic Fishes," also speculates on natural selection for pollution tolerance, and on the consequences of such selection for fish populations and fishery management.

Contact Dr. Arlene Crosby Longwell, (203) 783-4200.

### New Species of Midwater Fish Described

A third new fish species -- the midwater snapper *Paracoetes waltervadi* -- has been described from December 1988 collections by the Russian research vessel Vityaz on Walters Shoals south of Madagascar.

Contact Dr. Bruce B. Collette, (202) 357-2524.

### Center Authors Sweep 1991 "Best Paper" Awards in NMFS Journals

A paper by National Systematics Laboratory ichthyologist Dr. Thomas A. Munroe has been selected as the best paper appearing in the 1991 volume of *Fishery Bulletin*. Munroe's paper deals with "Western Atlantic Tonguefishes of

observed during some reversals, and this scenario may account for the apparently simple symmetries and the low intensities in the Cobb Mountain records. The recurrence of similar VGP positions in both the N-R and R-N reversals, such as the loops over South Africa, however, suggests something more systematic than the randomness implicit in Bogue and Merrill's white-noise spectrum. The recurrent VGP positions suggest either that the reversing field organizes itself as an intrinsic part of the reversal process or that factors external to the core, such as lateral variations in properties of the lowermost mantle, influence the reversing field.

The recurrence of similar geographical distributions of VGP paths during some reversals has been interpreted as evidence that some form of lateral heterogeneity in the lowermost mantle provides the geographical control. During several reversals, including the Matuyama-Brunhes, there seems to be a preference for the transitional VGPs to fall along two nearly antipodal longitudinal bands centred over the Americas and eastern Asia<sup>1-3</sup>. Lai *et al.*<sup>4</sup> suggested that there is a correlation between the preferred longitudinal bands and regions of fast seismic-wave propagation in the lower mantle<sup>14</sup>, which they interpreted as evidence that the mantle influences the reversing field.

The Cobb Mountain VGPs also tend to fall along antipodal tracks, but these tracks are centred over Africa and the central Pacific and are distinctly different from the preferred longitudinal grouping in other reversals. In fact, in the same maps used for the correlation of Lai *et al.*<sup>14</sup>, the Cobb Mountain VGP paths correlate better with regions of slow seismic-wave propagation. Because these reversals occurred over time intervals too short for significant changes in have occurred in the lower mantle, the differences in these transitional fields are difficult to reconcile with the hypothesis of lower-mantle control. If the mantle does affect the field, the different transitional fields of these reversals implies that the geodynamo responds differently to the same mantle conditions. The variations in the transitional fields of different reversals may ultimately provide some insight into the mechanisms through which the influence may occur<sup>15,20</sup>.

The symmetries defined by antipodal VGP positions, such as those observed in the Matuyama-Brunhes, Cobb Mountain, Upper Olduvai and some other reversals<sup>1-3</sup>, may reflect a fundamental character of some transitional fields. This is supported by models in which reversals result from interactions between dynamo symmetry families that are either symmetric or anti-symmetric about the Equator<sup>21,22</sup>. The interaction of symmetry families intrinsic to the geodynamo with geographical influences involving the lower mantle may provide an explanation for the differences between the transitional fields of different reversals.

Regardless of whether the large-scale symmetries are superimposed on the field by the mantle or result from intrinsic properties of the geodynamo, it now seems that at least some transitional fields were characterized by relatively simple geometries. Whereas the available data for some reversals, such as the Matuyama-Brunhes, suggest large-scale, non-dipolar transitional fields<sup>2</sup>, in the case of the Cobb Mountain reversals the transitional field geometries cannot be distinguished from dipolar fields. Any explanation of polarity reversal mechanisms or mantle interactions with the core must account for the presence of large-scale symmetries in these transitional fields. □

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## New 'phantom' dinoflagellate is the causative agent of major estuarine fish kills

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A WORLDWIDE increase in toxic phytoplankton blooms over the past 20 years<sup>1,2</sup> has coincided with increasing reports of fish diseases and deaths of unknown cause<sup>3</sup>. Among estuaries that have been repeatedly associated with unexplained fish kills on the western Atlantic Coast are the Pamlico and Neuse Estuaries of the southeastern United States<sup>4</sup>. Here we describe a new toxic dinoflagellate with 'phantom-like' behaviour that has been identified as the causative agent of a significant portion of the fish kills in these estuaries, and which may also be active in other geographic regions. The alga requires live finfish or their fresh excreta for encystment and release of a potent toxin. Low cell densities cause neurotoxic signs and fish death, followed by rapid algal encystment and dormancy unless live fish are added. This dinoflagellate was abundant in the water during major fish kills in local estuaries, but only while fish were dying; within several hours of death where carcasses were still present, the flagellated vegetative algal population had encysted and settled back in the sediments. Isolates from each event were highly lethal to finfish and shellfish in laboratory bioassays. Given its broad temperature and salinity tolerance, and its stimulation by phosphate enrichment, this toxic phytoplankton may be a widespread but undetected source of fish mortality in nutrient-enriched estuaries.

The alga, which represents a new family, genus and species within the order Dinamneales (K. Steidinger, personal communication), was inadvertently discovered by fish pathologists<sup>5</sup> who observed sudden death of cultured tilapia (*Oreochromis aureus* and *O. mossambicus*) several days after their exposure to freshly collected water from the Pamlico River. A small dinoflagellate increased in abundance before fish death, followed by a sharp decline unless additional live fish were introduced. Within 1-2 h of fish death, the sudden algal decline occurred because the cells produced resting cysts or non-toxic amoeboid stages and settled to the bottom of culture vessels (J.M.B., unpublished results).

The behaviour of the culture contaminant provided clues about its potential activity in estuarine habitat. We suspected that if low cell densities were lethal to fish in the wild, as in culture, then the alga would probably not be detected by routine monitoring efforts but might be found while a kill was in progress. We observed the dinoflagellate swarming in Pamlico water collected during a kill of nearly one million Atlantic menhaden (*Brevoortia tyrannus*; Table 1). Less than one day after the kill, few toxic vegetative cells remained suspended in the water

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although many fish carcasses still were present. In standard bioassays<sup>6,7</sup> maximum algal growth coincided with fish death, followed by rapid encystment (Fig. 1). This toxic dinoflagellate was found in abundance during several other major fish kills in the Pamlico and Neuse estuaries and in local aquaculture facilities (Table 1). Isolates from these events have been confirmed in laboratory bioassays as lethal to 11 species of finfish including commercially valuable striped bass (*Morone saxatilis*), southern flounder (*Paralichthys lethostigma*), menhaden and eel (*Anguilla rostrata*).

The algal isolates all exhibit similar behaviour. Flagellated, photosynthetic toxic vegetative cells excyst after live fish or their fresh excreta are added to aquaria cultures under low light (Fig. 2a, b). The lag period for excystment ranges from minutes to days and increases with dormancy period or cyst age. The cells appear atrophic but have thin cellulose deposits (thecal plates, Fig. 2c)<sup>8</sup> beneath outer membranes that obscure the 'plate arrangement' required for formal speciation<sup>9</sup>. This dinoflagellate completes its sexual cycle while killing fish. Vegetative cells produce poorly pigmented, anisogamous gametes; the male is smaller, and its extended longitudinal flagellum is five- to sixfold longer than the cell (Fig. 2d). The vegetative cells can also form large amoeboid stages (pigmented or colourless, 80–250 µm long with extended pseudopodia) with unknown role in the life cycle.

TABLE 1 Fish kills associated with the new toxic dinoflagellate, documented in North Carolina during 1991–92

Date	Location	Temperature (°C)	Salinity (‰)	Fish killed	Alga (cells ml <sup>-1</sup> )
1991					
May	Pamlico River	24	3	Menhaden	1,300
June	Pamlico River	29	10	Menhaden, others	1,100
Aug.	Pamlico River	31	12	Menhaden	600
Aug.	Pamlico River	30	8	Flounder walk	800
Sept.–Oct.	Neuse River	26	11	Menhaden, Blue crabs	1,200
Dec.	Taylor's Creek	15	30	Fish walk (flounder, eel, mullet, others)	~35,000
1992					
Jan	Aquaculture	9	0	Striped bass	
Feb	NC maritime museum (Newport River)	21	25	Fish spp.	
Feb	National Marine Fisheries Service (Newport River)	15–21	25	Menhaden, others	

Locations on the Pamlico River followed a salinity gradient from 3 to 12‰ over an 8-km distance. Low dissolved oxygen (DO, 2.8 mg l<sup>-1</sup>) was measured from the bottom water in the vicinity of the kill during June 1991. On all other dates, DO was ≥ 4.5 mg l<sup>-1</sup> throughout the water column (R. Carpenter, K. Lynch and K. Miller, NC Dept. of Environmental Health and Natural Resources, personal communication). In each case from 1991, we observed abundant pigmented, flagellated vegetative cells in water samples taken during the kill. (Note: 'Walk' refers to cases in which stressed fish attempted to leave the water and beach before they died.) Water from fish kills in 1992 was collected within 1–4 days after fish death; hence, it was not possible to obtain data for cell abundances while the kills were in progress. Samples from a kill at a freshwater aquaculture facility in Aurora, NC contained ~40 vegetative cells ml<sup>-1</sup> as well as cysts. Water from both kills in February 1992 (original source, the Newport River, 11 °C, 25‰) yielded toxic vegetative cells as well as gametes, planozygotes, amoeboid stages and cysts. We confirmed virtually identical morphology of these with previous isolates using scanning electron microscopy, and verified toxicity of each population using aquarium bioassays with tilapia and striped bass as test species.

Gamete fusion results in planozygote formation followed by production of additional toxic vegetative cells if live fish are present. Without live fish, the planozygotes lose their flagella and form thick-walled cysts but remaining gametes continue to multiply especially under phosphate enrichment (batch cultures enriched with 50–400 µg PO<sub>4</sub><sup>3-</sup> l<sup>-1</sup> yielded significantly more gametes after 6 days than cultures with PO<sub>4</sub><sup>3-</sup> ≤ 10 µg l<sup>-1</sup>; Student's *t* test, *P* < 0.01)<sup>10</sup>. Such stimulatory effects have not been observed with either nitrate or ammonium. A ciliated protozoan, *Stylanichia* sp.<sup>11</sup>, is common in local estuarine waters and consumes both toxic vegetative cells and cysts. But a pigmented, toxic amoeboid stage of the alga, in turn, attacks the protozoan predator.

Each flagellated vegetative algal cell forms a peduncle or pseudopodium shortly after excystment<sup>12,13</sup>. The peduncle becomes fully extended during toxic activity (Fig. 3a), particularly at the optimal salinity of 15‰ (among tested salinities 5, 10, 15, 25 and 35‰; significantly higher vegetative cell production at 15‰, Student's *t* test, *P* < 0.01)<sup>10</sup>. The lethal agent is an excreted neurotoxin (under analysis by D. Baden, personal communication). Water from which cells had been removed by gentle drop-filtration (0.22 µm-pore filters) induces neurotoxic signs by fish including sudden sporadic movement, disorientation, lethargy and apparent suffocation followed by death. The alga has not been observed to attack fish directly. It rapidly increases its swimming velocity to reach flecks of sloughed tissue from dying fish, however, using its peduncle to attach to and digest the tissue debris. Within several hours of fish death, toxic vegetative cells encyst in the presence or absence of fish carcasses (Fig. 3b–d). The cysts can be destroyed by dilute bleach. But after treatment with concentrated sulphuric acid or ammonium hydroxide, 35 days of desiccation, or nearly 2 years of dormancy, small percentages of the cysts have yielded viable toxic cells when placed in saline water (10–15‰) with live fish (J.M.B., unpublished results).

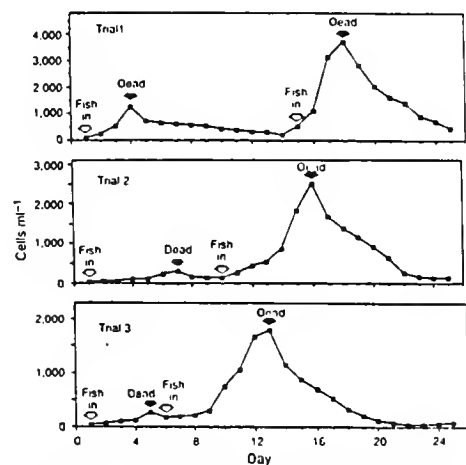
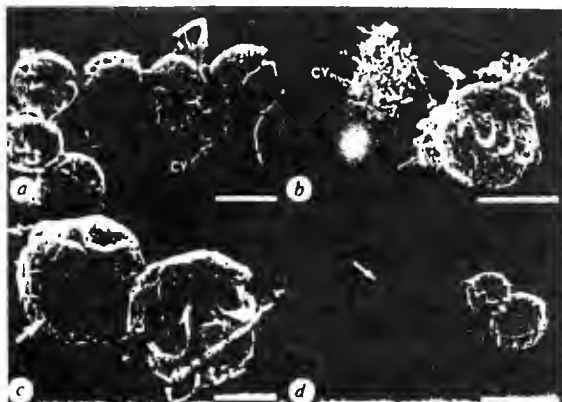


FIG. 1 Response of the dinoflagellate (toxic flagellated, vegetative stage) to *Oreochromis aureus* (length 3 cm, approximate age 40 days) in repeat-trial experiments. The trials were conducted as batch-culture aquarium bioassays (18 °C, 10‰, 30 µEinstein m<sup>-2</sup> s<sup>-1</sup>) which varied in the time interval between death of the first fish and addition of a second live fish (fish length 5 cm). The toxic vegetative stage attained greatest abundance just before fish death, followed by rapid decrease in abundance as the cells encysted or formed non-toxic, colourless amoebae and settled out. As we reduced the time interval without live fish, the second fish died more rapidly.

FIG. 2 Scanning electron micrographs of the toxic dinoflagellate. a, b, c. Several hours after a live tilapia was added to aquarium cultures (with environmental characteristics described in Fig. 1) after a 2-day period without fish. Most cysts (cy) had already produced flagellated vegetative cells (a scale bar 10  $\mu\text{m}$ ; b, arrows indicate remains of cyst wall; scale bar, 8  $\mu\text{m}$ ). c. Cell showing the outline of plates or 'armour' (for example, arrow indicating an apical plate) beneath surficial membranes (scale bar, 5  $\mu\text{m}$ ). d. Male and female gametes (left and right, respectively). The presumed gametes were abundant ~1 day after addition of a live fish, when the fish began to exhibit neurotoxic signs of lethargy, inability to maintain balance, and apparent respiratory distress. In viewing live samples under light microscopy, we have observed such cells in fusion; note the extended length of the longitudinal flagellum on the male (arrow) (scale bar, 15  $\mu\text{m}$ ). Photos by C. Hobbs.

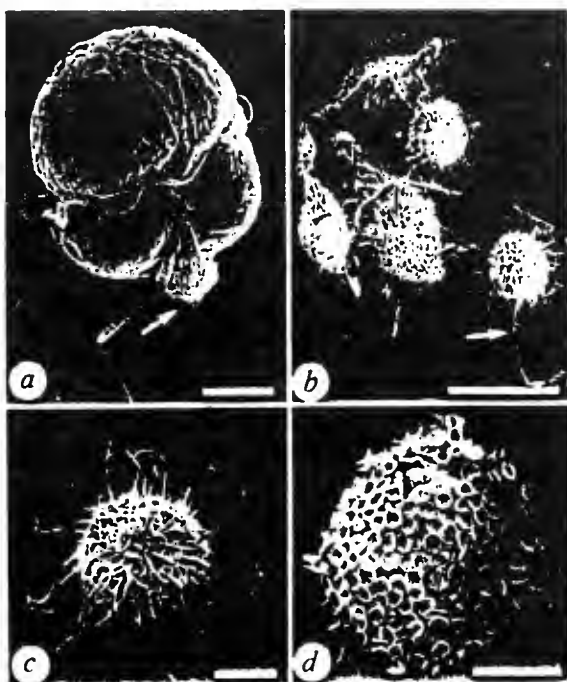


Laboratory bioassays and field collections have confirmed that this dinoflagellate is lethal to finfish across a temperature gradient from 4 to 28 °C<sup>14,17</sup>, and across a salinity range of 2–35‰. It has also killed hybrid striped bass *Morone saxatilis* × *M. chrysops* in fresh water (0‰ salinity, in aquaculture facilities and in bioassays) with moderate concentrations of divalent cations (Table 1). Both native and exotic fishes are affected, suggesting stimulation by amino acids or other common, labile substance in fish excreta<sup>18,19</sup> (Table 1). Shellfish such as blue

crabs (*Callinectes sapidus*, carapace width 8–10 cm) and bay scallops (*Aequipecten irradians*, shell width 4–5 cm) do not stimulate excystment or toxic activity. These shellfish remained viable for a 9-day test period while filtering low concentrations of the dinoflagellate (~50 cells ml<sup>-1</sup>), although the scallop closing reflex slowed perceptibly. When placed in aquaria with dying finfish, however, blue crabs were killed within hours in several days, and scallops died within minutes.

Long-term data sets from Europe, Asia, and North America

FIG. 3 Scanning electron micrographs of the dinoflagellate from aquarium cultures. a. While tilapia were dying. At its optimal salinity of 15‰, the flagellated vegetative cells assume a swollen appearance and the peduncle (arrow) becomes fully extended for use in saprotrophic feeding on bits of fish tissue (scale bar, 3  $\mu\text{m}$ ). b. Two hours after the tilapia died and were not replaced with live fish. Most vegetative cells had begun to form cysts; note that the longitudinal flagellum was still attached to one of the cells (arrow) (scale bar, 10  $\mu\text{m}$ ). c. One day after fish death, many completed cysts presumed to contain dinoflagellate cells were present. Note that the outer covering consists of scales with long bristles (scale bar, 3  $\mu\text{m}$ ). d. Nearly 1 month after fish death, the outer scales on most cysts had lost the bristle extensions (scale bar, 5  $\mu\text{m}$ ).



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strongly correlate toxic phytoplankton blooms with increasing nutrient enrichment<sup>20</sup>. The Pamlico and Neuse Estuaries receive high anthropogenic loading of phosphorus and nitrogen<sup>21,22</sup>. Over the past century, cultural eutrophication has probably shifted the habitat to more favourable conditions for algal growth and toxic activity. Unlike other toxic phytoplankton, however, this dinoflagellate is ephemeral in the water column. The lethal flagellated vegetative cells move from the sediment surface to the water in response to lingering finfish which become

lethargic from the toxin. The alga kills the organisms which stimulate it and then rapidly descends. Increasing reports worldwide describe unexplained kills involving fish that die quickly after exhibiting neurotoxic signs<sup>23,24</sup>. It is unlikely that this eurythermal, euryhaline dinoflagellate occurs only in these estuaries. We predict that with well timed sampling, this alga will be discovered at the scene of many fish kills in shallow, turbid, eutrophic coastal waters extending to geographic regions well beyond the Pamlico and the Neuse. □

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## Physiological and behavioural thermoregulation in bigeye tuna (*Thunnus obesus*)

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TUNA are unique among teleost fishes in being thermoconserving. Vascular counter-current heat exchangers maintain body temperatures above ambient water temperature, thereby improving locomotor muscle efficiency, especially at burst speeds and when pursuing prey below the thermocline<sup>1-4</sup>. Because tuna also occasionally swim rapidly in warm surface waters, it has been hypothesized that tuna thermoregulate to accommodate changing activity levels or ambient temperatures<sup>5</sup>. But previous field experiments have been unable to demonstrate definitively short-latency, mammalian-type physiological thermoregulation<sup>6,7</sup>. Here we show using telemetered data that free-ranging bigeye tuna (*Thunnus obesus*) can rapidly alter whole-body thermal conductivity by two orders of magnitude. The heat exchangers are disengaged to allow rapid warming as the tuna ascend from cold water into warmer surface waters, and are reactivated to conserve heat when they return into the depths. Combining physiological and behavioural thermoregulation expands the foraging space of bigeye tuna into otherwise prohibitively cold, deep water.

In all fish, oxygenated arterial blood leaves the gills essentially equilibrated to ambient water temperature ( $T_a$ ). But in tunas, arterial blood passes through dense retia of interdigitated veins carrying warm blood away from the swimming muscles. The whole-body heat-transfer coefficient ( $k$ ) is thereby reduced and heat is returned into the tissues<sup>1-3</sup>. Although elevated body

temperature ( $T_b$ ) improves locomotor muscle power for these obligate swimmers when they are at high speeds or below the thermocline<sup>8,9</sup>, a permanently engaged heat retention system could be counterproductive for tuna swimming rapidly (fleeing, or chasing prey) in warm surface waters, because  $T_b$  may rise to injurious levels. Thus, it has been postulated that tuna can modify thermoconservation efficiency to fit the immediate demands of activity level and thermal environment<sup>7</sup>.

Studies with captive tuna have been suggestive of an ability to regulate  $k$  by a few per cent (probably through altered cardiac output which changes the dwell time of blood in the retia)<sup>7,10</sup>, but data from field experiments with bluefin tuna (*T. thynnus*), are ambiguous<sup>6,7</sup>, and a transmitter placed in a bigeye tuna stomach failed to demonstrate thermoregulation<sup>6</sup>. Hysteresis in the warming and cooling rates of swordfish, *Xiphias gladius*, occurs over periods of hours<sup>11</sup> and is associated with irregular diving patterns, making it difficult to separate the effects of changes in activity level, cardiac output and thermal inertia imparted by simple heat exchangers<sup>7,11-13</sup>. Tuna, however, experience very rapid changes in  $T_b$ , which would require fast thermoregulatory adjustments. Thus, the question remained: can tuna perform physiological thermoregulation, or are the retia simply passive devices sensitive to blood flow rate?

The behaviour of subadult bigeye tuna in Hawaiian waters is ideal for testing for the occurrence of physiological thermoregulation. During daytime, they select temperatures between 14 and 17 °C (at depths around 250 m), from which they make regular periodic, rapid vertical excursions up into warmer waters<sup>14</sup>. During these excursions, the fish experience first increasing and then decreasing  $T_b$ , changing at up to 12 °C min<sup>-1</sup>. The comparatively small size of these tuna (65 to 80 cm; 7.0 to 12 kg), reduces the influence of simple thermal inertia on  $T_b$ .

In open-ocean tracking experiments, we telemetered swimming depth and  $T_b$  data from two bigeye tuna, one of which exhibited typical bigeye distribution and behaviour (Fig. 1). The radically different rates of body warming and cooling observed during the vertical excursions were modelled with a numerical parameter estimation procedure<sup>15</sup> which minimizes the squared differences between observed and estimated  $T_b$ .

Tuna body temperature is a function of heat exchange with

**APPENDIX II:**

**INTERNATIONAL TRANSPORT WORKERS,  
FISHERMEN'S SECTION  
AMMENDED ENVIRONMENTAL STATEMENT**



International Transport Workers' Federation

Fishermens' Section Conference

Torremolinos, 24 - 26 March 1993

Agenda item 5: Consideration of the Marine Pollution and Protection of the Marine Environment policy document

1. A summary of the draft policy document is attached in the Annex.
2. The ITF Secretariat suggests that since the draft policy was formulated there have been a considerable number of significant international developments which would more than justify a comprehensive revision of the document.
3. The Conference is invited to discuss the summary and to determine what further action should be taken.

Summary of Draft Policy on Marine Pollution and the  
Protection of the Marine Environment

1. The draft policy document contains an introduction; a resume of the international regulatory regime; the ITF environmental policy; the role of ITF affiliates; the role of the ITF Secretariat; and a list of demands. This summary will therefore concentrate on the environmental policy and the list of demands.

ITF Environmental Policy

2. The document refers to previous ITF Congress Resolutions: The 34th Madrid Congress (1983) - No.4 on curbing the destruction of marine flora and fauna and No. 5 on preventing the dumping of nuclear waste at sea; The 35th Luxembourg Congress (1986) - No. 6 on the transport and storage of nuclear waste and No. 10 on the need to give environmental issues higher priority in the formulation of integrated transport policies; the 36th Florence Congress (1990). No. 3 the need for urgent international action to halt the depletion of the ozone level, control greenhouse gases, tackle the problems caused by pollution and the dumping of toxic wastes, No. 4 encouraging the use of public transport, No. 10 on the dangers caused by the dumping of toxic wastes and No. 34 on the carriage of irradiated nuclear fuel on purpose built ships.
3. The document also refers to the discussions that have taken place within the ITF on the problem of tanker safety, the need for the old sub-standard tankers to be scrapped and on the dumping of radioactive waste in repositories under the sea-bed.

Demands

4. To ensure that the level of pollutants produced as a result of industrial production are reduced and to establish the principle of "the polluter pays";
5. To ensure that all major ports provide reception facilities for ships' waste and oily wastes (slops etc.); *enforcement should be included*.
6. To intensify the campaign against sub-standard shipping by highlighting the lower levels of safety and increased risks to the marine environment;
7. To require that all new and existing industrial products be provided with a list of constituent parts and instructions for safe usage and disposal so as to minimise the effects of the product on the environment and the health and safety of the consumer;

8. To establish an international legal requirement for environmental audits, to assess the effects to the environment posed by products and/or activities with the onus on the producer to establish that it does not adversely endanger consumers or damage the environment;
9. To draw attention to the threat to the marine environment caused by land based sources of pollution via the rivers, coastlines and the atmosphere;  
*plastics & pet. leaks.*
10. To ensure that the dumping of industrial and other toxic waste and nuclear waste on or under the sea-bed is prohibited and that the dumping of sewage sludge is eventually banned;
11. To secure the introduction of effective purification of urban sewage with emphasis on protecting the marine environment;
12. To ensure that the carriage of irradiated nuclear fuel on non-purpose built ships is banned and that irradiated nuclear fuel containers transported on purpose built ships are designed to withstand the extraordinary stresses placed on them by marine environment;
13. To ensure that the extraction of minerals from the sea bed such as oil and gas, sea-bed mining and aggregates dredging is not carried out at the expense of the marine environment and its inhabitants;
14. To campaign for the scrapping of older tanker vessels unless they are converted to meet the most recent safety criteria; *incl. LNOs, PTs, CTs, etc.*
15. To improve flag state compliance with relevant international Convention standards, including those dealing with marine pollution.
16. To ensure that the competency requirements for ships officers and crew are maintained and to resist attempts to reduce such standards;
17. To campaign to extend the Memorandum of Understanding on Port State Control and encourage the ratification of ILO Convention 147 (Merchant Shipping Minimum Standards) on a truly global level;
18. To recognise the important role of Antarctica, its continental shelf and the Southern ocean in maintaining the stability of the global marine environment and atmosphere, and campaign for the protection of this fragile ecosystem;
19. To demand an end to the inefficient use of fossil fuels by shifting the emphasis of energy policy from non-renewable to renewable sources and by making greater efforts to conserve existing energy sources by embarking on a radical campaign of re-cycling waste products;
20. To ensure that ecological considerations are prioritised in economic activity;
21. To campaign for developing countries to be given assistance to undertake environmental reform and for the World Bank etc. to adopt environmental criteria in their restructuring exercises;
22. To campaign for research into cleaner production processes and the introduction of energy saving technology;
23. To ensure that the necessary information and technology for cleaner industrial production processes and energy saving is transferred freely from one country to another;

- .. To ensure that all oil and gas companies contribute to a special fund for the eventual removal of all offshore installations once the prospecting and production has ceased;
- 25. To campaign for the introduction of an environmental tax on agricultural fertilizers and pesticides in all countries to encourage a reduction in consumption and thereby reduce the discharge of man made fertilizers and nutrients into the sea;
- 26. To campaign for the gradual replacement of nuclear power and fossil fuel with renewable and environmentally friendly energy sources;
- 27. To ensure that the export of hazardous wastes to the third world and the export of chemical products that have been banned in developed countries be prohibited;
- 28. To educate members on and to initiate boycotts of goods that cause environment damage;
- 29. To campaign for the so-called peace dividend to be used for environmental purposes; and
- 30. To foster trade unions co-operation with environmental organisations to mutual benefit.

#### Role of ITF affiliates

- 31. The draft policy document states that the implementation of any environmental policy is contingent on ITF affiliates securing the active support and involvement of their members. It also suggests that the scope of collective agreements be extended to include environmental criteria.

APPENDIX III:

ARTICLES ON INDIVIDUAL TRANSFERABLE QUOTAS  
AND THE ATLANTIC SURF CLAM PLAN  
FROM COMMERCIAL FISHERIES NEWS  
NOVEMBER 1992 EDITION

## ITQs

## Solution to the 'tragedy of the commons' or tragedy for the common man?

These days, ITQs — individual transferable quotas — are likely to be included in the range of solutions considered for about any fisheries management problems. ITQ systems — which typically allocate to boat owners a share of the resource which can then be fished, or sold or leased to another operation — have been suggested for managing the sea scallop and lobster fisheries.

In theory, ITQs are a fishery manager's dream come true. After issuing initial allocations, the free market takes over, eliminating the need for further regulation. By conferring ownership rights and responsibilities on a select few fishermen, the "tragedy of the commons" is supposed to be averted. But reality is rarely as neat as theory.

Two years ago the United States put its first ITQ system in place. The impact it has had on the surf clam and ocean quahog fisheries is staggering; the clam industry has been fundamentally changed forever.

Whether that change has been good or bad depends on who you are. Some vessel owners reportedly became millionaires overnight. Others lost their jobs as commercial fishermen, probably forever. Some processors can now get the clams they want, when they want them, at the price they want to pay. Others have been absorbed by corporate giants.

MIT Sea Grant Marine Advisor Madeleine Hall-Arber, Ph.D., has pieced together the story of how the ITQ system has altered the clam fishery and affected the people involved. Particularly in light of the National Marine Fisheries Service ongoing mission to achieve "economic efficiency" in U.S. fisheries, her findings give us all food for thought. —Editor

by Madeleine Hall-Arber

DOVER, DE. — With the implementation of Amendment 8 to the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan on Oct. 1, 1990, individual transferable quotas (ITQs) were instituted for the first time in a federal fishery of the United States.

Often viewed by fishery managers and economists as a way to resolve the "tragedy of the commons," some fishermen and small businessmen are now wondering if ITQs might, in fact, constitute a tragedy for the common man.

By all accounts, the ITQ system has succeeded in its objective of "rationalizing the fishery" by reducing the number of boats and people working to harvest the resource.

Consequently, the ITQ system has also resulted in a number of small firms losing their niche in the clam industry and has had major effects on clam boat crewmen.

"Many former clammen have been

forced out of the fishery; many others are working longer hours for less money; and many clammen said that they are working in worse weather than they worked under the old system," wrote anthropologists Bonnie McCay and Carolyn Creed in their July 1992 project progress report "Social Impacts of ITQs in the Sea Clam Fisheries" for the New Jersey Sea Grant Program.

Dave Wallace, a Salisbury, MD-based fisheries business consultant, worked for

from their conservation efforts and so will not overexploit the resource.

A further elaboration on the concept of the "tragedy of the commons" is that the race to harvest the common resource leads to overcapitalization. Economists disapprove of overcapitalization because it ties up capital (money) in equipment that is idle for long periods of time, capital that could be used in more productive ways. Economists view this

Today, there are 70 vessels left in the industry; more, Creed said, than she would have predicted by now. She has not yet analyzed how these are distributed among firms.

Since the original FMP did not effectively regulate catching power or efficiency, fishermen could and did enhance carrying capacity and the speed with which they caught clams. As vessel size and the catching speed increased, the number of

hours of allowable fishing time was reduced to ensure that landings did not exceed the annual quota.

In 1979 each vessel was allocated 1,440 hours of fishing time during the year. By 1987 each vessel was allowed only 25 six-hour fishing trips annually (150 hours total). By this time over half the fleet was composed of vessels over 100 gross tonnage and fleet efficiency had grown tremendously.

The fleet's catch-per-unit-of-effort (CPUE) jumped from 26 bushels of clams per hour in 1979 to 190 bushels per hour in 1987. Besides improved efficiency, improved abundance of clam stocks contributed to the surge in CPUE.

The management plan was widely criticized because of "severe overcapitalization and high enforcement costs," Creed noted. A 1986 National Marine Fisheries Service (NMFS) Task Force report indicated that the efficiency of the fleet was so high that the entire annual Mid-Atlantic surf clam quota could be caught by only six vessels working year-round.

However, Elmer Widerstrom of Cape May, NJ, a former clammer who ran several boats as a hired captain, maintains that 99% of the clammen were "doing fine." He suggested that "greed" motivated the passage of Amendment 8 and that it was good for only a handful of people.

"The bigger the person, the better they came out. Eliminating all these boats eliminates jobs," Widerstrom said. "The little person got squeezed out, didn't get enough allocation to be able to continue. It's not the American way."

#### Unsolved problems

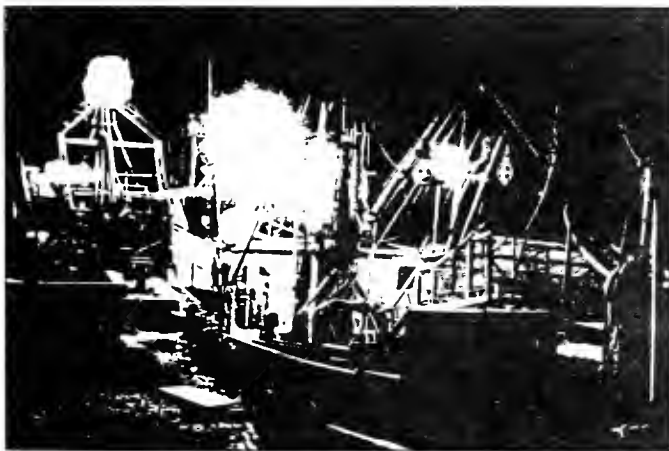
Managers hoped to fix a number of problems with the surf clam and ocean quahog fishery which were raised as the reasons for Amendment 8.

While ITQs did lead to the consolidation of vessels in the fishery, some of the problems intended to be solved still persist. And, some problems in the fishery were addressed without ITQs.

For example, economists suggest that ITQs create a market for access rights and generate "resource rent," thus providing more benefits for the public good.

But, in fact, the market for access rights was evident before ITQs were

See CLAM ITQs, next page



While surf clam vessels go about the business of landing product, the consequences of ITQ management of the fishery continue to be examined.

clam giant American Original, a harvesting and processing company, in the '70s and early '80s and was involved when the original management plan was being developed.

ITQs, he says, are instituted as a way to reduce numbers when there are too many participants in a fishery.

"The nature of the beast is that no one is allocated enough to support themselves," he said. "Vessel owners without enough quota to support themselves (and without enough financing to purchase additional allocation) have the option to sell their vessels and leave their allocations, or sell both and retire or look for work in another industry. The wealthy take out the less wealthy, but it is probably better than just going broke."

#### Common resource

Managers have cited the clam fishery as an example of the "tragedy of the commons," which refers to the idea that when enough people have unlimited access to a renewable resource, they will ruin it through overexploitation.

As one fisherman put it, "I'm going to fish as hard as I can today because if I don't, someone else will."

The tragedy is that there is no guarantee that a fisherman who conserves the common resource will benefit since he has no control over the harvest activity of other fishermen. But, the theory goes, if access is controlled through government or private ownership, the remaining users will benefit

as contrary to the public good.

Economists believe that "increasing the rent from the fishery" or "rationalizing the fishery" (i.e., deriving "benefit") is in the best interest of the nation. Positive aspects economists associate with rationalizing the fishery include achieving: the least cost to catch fish, the least tied-up capital, and the lowest cost to consumers.

However, experience has shown fisheries managers that simply limiting the numbers of participants (i.e., limiting entry through moratoriums) is not sufficient to reduce overfishing and overcapitalization.

#### Vessel consolidation

The Atlantic Surf Clam and Ocean Quahog Fishery Management Plan (FMP) was initially approved in 1977. Over time, it established a moratorium to limit entry, set annual quotas, and limited the amount of time vessels could fish.

These measures, however, did not lead to reducing the size of the fleet; since fishing time could not be combined on one vessel, the only way a firm could increase its catch was to increase the efficiency of its vessel or buy additional vessels.

There was, however, a consolidation of ownership. According to Creed, in 1979, 89 firms each owned one vessel and 23 owned two to four. By 1988 there were 133 active vessels in the Mid-Atlantic surf clam fishery (160 in the combined surf clam/quahog fleet), with 41 firms owning one vessel, 10 firms owning two to three, and three firms owning 10 or more.

## Clam ITQs Continued from previous page

implemented, due to the moratorium on new permits. In 1984, the Mid-Atlantic surf clam permit was worth an average of \$130,000. By 1988, the permit added \$200,000 to the cost of the boat, vessel owners told Creed.

Since catching power was attached to vessels, consolidation of the fleet did not occur prior to the ITQ system, but consolidation of numbers of crewmembers did. People who owned more than one vessel were able to use the same crew on several because vessels were allowed to work only for short periods.

Safety was cited as another reason for developing a different management scheme. Since vessels were only allowed to fish for short periods of time, they often sailed in bad weather and occasionally overloaded their boats, leading to loss of life. Weather-related problems were resolved when NMFS changed the rules to allow clambers to fax in a cancellation and reschedule their lost time.

But even with ITQs the safety problem still exists. Now processing plants, based on their production and market demands, dictate when the boats fish, according to research conducted by Ken Beal of NMFS. Boats are forced to fish in bad weather to maintain their link with the processor who holds the allocation.

High enforcement cost was another reason cited for revising the FMP. However, enforcement is still a problem. Recently NMFS moved to implement regulations to make it more difficult for clambers to falsely claim their catch came from state waters, where there is no allocation, a practice that had reportedly become common among some vessels.

The time NMFS must spend in tracking landings and ITQ leases and sales is a cost to the nation. The NMFS regional director must approve all transfers of ITQ alloca-

tions, typically 50 per month, according to NMFS' Hannah Goodale.

### Jobs lost, shares cut

Anthropologists McCay and Creed are still assessing the social impacts of ITQs in the sea clam fisheries. Of the 76 men they have interviewed, 27 (35%) are no longer working on clam vessels.

Despite everyone's efforts to remain in fishing, only six of these 27 are still commercial fishermen. Ten have found jobs ashore, five are unemployed, and three are retired. Perhaps the hardest hit were the hired captains who lost their jobs when the fleet was consolidated.

The share system has evidently been undergoing revision since the introduction of ITQs. In their interviews, McCay and Creed found that "when vessel owners began leasing and buying ITQ allocation, they passed these costs on to their crewmen."

For example, a clam allocation is leased at a cost of \$4 a bushel. The market pays \$8 a bushel for the harvested product. But the vessel owners pay shares only on \$4 per bushel, so the cost of the allocation has been shared by the crew. A few vessel owners also reduced the share on the clams caught with their original ITQ allocation, which had been awarded by NMFS at no cost to the vessel owner.

Other vessel owners who have not yet changed their crew's share reported that they may have to do so in the near future in order to be able to sell their clams at prices competitive with the owners who have lowered their crew's share.

One large fleet owner now pays the same price per bushel for catching surf clams (\$8) as for catching ocean quahogs (\$3.75) despite the major difference in ex-vessel prices between the two. Though captains and crew find this change objectionable, they reportedly dare not complain because so

many former clambers are looking for work that they could be easily replaced.

Ken Beal reported that one owner of several vessels indicated that crewmen are earning about \$20,000 less than before Amendment 8 was implemented. In addition, he found that some boats have cut crew size from five to three, so crews are working harder while earning less.

### Owner reactions

In their survey of vessel owners, Creed and McCay found there were three main categories of reactions to the implementation of ITQs. Those in the first category feel the system allowed them to make better business decisions and gave them more control. Those in the second category believe the regulations have created an artificial business environment with the cost of business now being the cost of buying and/or leasing ITQs. Those in the third category feel the system has hurt them, creating conditions that will force them to sell out.

Owners comfortable with the ITQ system expect to remain in the fishery in a strong position, along with the others who are the "best of those who built the fishery," or they expect to be able to sell out for a high profit.

Those in the second category suggest that the ITQ system has created a market for the right to fish and will therefore attract speculators with no commitment to the fishery. In addition, they complain about the dislocation of crewmen and support service personnel.

Some of these vessel owners say the idea that ITQs benefit the public good by reducing overcapitalization is absurd. They point out that money tied up in debt for ITQ allocation is no freer for productive purposes than money tied up in vessels.

The third category consists primarily of smaller vessel owners who feel that the ITQ system requires large amounts of capital to remain competitive in the fishery. Some of these are also trapped in the fishery because the glut on the market for fishing vessels due to fleet consolidation precludes the sale of their vessels.

An 80' vessel with a \$100,000 mortgage fishing with two crewmembers along with the captain probably needs an allocation of 30,000 bushels to survive, according to former surf clammer Ed Watson of Dennisville, NJ.

Watson said that with his history of

stocking 24,000 bushels, he expected to receive 18,000 bushels under the original allocation formula, an amount he thought he could live with. But when all the manipulations were done, he ended up with 14,000 bushels.

"The reduction was more than I thought was fair," he said.

Watson now leases his allocation and has learned a new trade outside of fishing, but said he's "finding a guilt trip" because he's receiving more money from leasing his allocation than he would if he were running his boat.

Vessel owners agree that eventually there will be fewer processing firms and fewer independent fishing vessel firms. Those who survive will be the large firms and those with large quotas. Some believe only the vertically-integrated processors will survive and some believe that the consumer will benefit with a better clam product.

### Tracking impacts

The surf clam/ocean quahog ITQ system is still new. The industry has probably not settled into a configuration that will last for any length of time. Eventually managers will have to analyze ITQs from a wide range of perspectives.

In determining if the most benefit for public good has been obtained from the fishery, researchers will have to include the monetary and non-monetary considerations to crew, captains, captain-owners, vessel-owners, processors, support personnel, and families in the fishery, and fishing communities, as well as enforcement costs and costs associated with implementation and tracking (NMFS services), etc.

To some vessel owners and processors, the ITQ system seems to be an improvement, affording greater predictability and control. A few vessel owners feel that the system has had little effect on their businesses.

But the costs of the program seem high to many crewmen and some vessel owners, in terms of both economics and social impacts.

Those in the fishing industry in the United States and around the world, NMFS, economists, and academicians are all watching the surf clam industry to see if the ITQ system is the solution to the "tragedy of the commons" or a new tragedy in the making.

Madeleine Hall-Arber

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# Who owns the clam resource allocations?

GLoucester, MA • While the ITQ system for surf clams and ocean quahogs confers a form of resource ownership on those people holding allocation, figuring out who exactly owns how much of that resource is no easy task.

For 1992 the surf clam quota is 2,850,000 bushels and the quahog quota is 5,300,000 bushels. Rather than an actual number of bushels, ITQ holders own a percentage of the annual quota. The initial percentage allocations were issued to vessels owners based mainly on 80% of an adjusted two-year vessel catch history modified by a 20% "cost factor" (vessel length x width x depth).

Once allocated, however, quota shares were no longer attached to a vessel. They could be sold, traded, or leased if the owner did not wish to use them. There is no limit on the number of ITQs one can own or lease.

Currently, there are 112 owners of surf clam quota and 78 owners of quahog quota, according to Myles Razan of the National Marine Fisheries Service (NMFS) in Gloucester, which tracks all quota transfers.

Who owns the quota is public information, but because owners tend to create a new firm for each vessel, it is very difficult to determine how many vessels actually belong to a single individual or company.

Another factor which makes tracking of sales and leases confusing is that some allocations are held by banks in order to permit buyers to purchase allocations over a long term. Bob Ross of the NMFS Fisheries Analysis Division found that leasing is manipulated among owners and processors for tax purposes, further disguising true ownership or control.

NMFS "does not pierce the corporate veil," observed Joel MacDonald, an attorney with the National Oceanic and Atmospheric Administration. "As long as the official

buyer conforms to regulations, there is no problem."

The largest quantities of quota are currently owned or controlled by Borden Inc., an American company headquartered in Columbus, OH. Snow Food Products, producer of the popular Snow's canned clam powder, is a Borden subsidiary. Borden, which bought out American Original shortly after Amendment 8 was implemented, reportedly controls about 40% of the ocean quahog allocation and 25%-30% of the surf clam allocation.

Reportedly, some of the allocation that in NMFS' records appears under the ownership of National Westminster Bank, a British Bank which holds the mortgage on the American Original purchase, is actually under Borden's control.

Sea Watch International, a wholly owned subsidiary of a Nichirei, a Japanese company with other seafood interests on the West Coast and Alaska, is rumored to have recently bought 150,000 bushels worth of surf clams allocation, for an estimated \$2-\$3 million. This would appear to place Sea Watch as the fourth largest owner of allocation, although, again, it is difficult to tell.

Not surprisingly, other major owners or controllers of allocation reportedly include two other food company giants, General Mills and Campbell Soup Co. Campbell has exclusive agreements with J. H. Miles and Blount Seafood Corp., which own vessels and allocation.

There are almost no independent, single vessel owners left in the industry.

## Little guy loses

Amendment 8 was implemented in October 1990. ITQ trading began in earnest in April 1991 after a federal court rejected two lawsuits filed by processors and vessels

owners to stop implementation of the amendment.

By December 1991, ITQ prices were about 2.5 times the ex-vessel price of clams, researcher Carolyn Creed reported, although people in the industry had expected this to rise to about 4.5 times the price.

At the time, surf clam ITQs were worth about \$17 a bushel, and quahog ITQs about \$5-\$6, according to Creed.

Currently, fisheries business consultant Dave Wallace estimates that surf clam ITQs are worth about \$25, quahogs \$6-\$7.

A number of early observers, such as Wallace and Creed, predicted that ITQ buyers would be companies with money from sources other than the fishery. A likely result would be the consolidation of ITQ owners and processing companies. Indeed, this prophecy is being fulfilled.

As Paul Carr, business manager for Guilford Associates in Atlantic City, NJ, a one-time owner of 20 clam vessels and current owner of one active clam vessel, pointed out, "It is the large corporations who have the wherewithal to play."

The major problem for small firms is

that the allocation is only a right to fish, and NMFS does not allow it to be used as collateral for loans. Large corporations don't need to rely on their allocations to obtain financing, "they just write a check," joked Wallace.

Some of the large corporations do finance vessel owners or arrange for their banks to provide loans for allocation purchase in exchange for exclusive marketing agreements, according to former clam fisherman Ed Watson.

Vessel allocations, issued only to working vessels, might have afforded the independent fishermen greater opportunities, such as making it possible to set up joint ventures with the major corporations.

Chances are that few major corporations would actually want to take on the risk of vessel ownership, Wallace said. By owning the allocation, the companies get their clam supply through contracting out with vessels, and never incur the risk associated with running vessels.

"Clams," Wallace said, "are just an ingredient to many of these food companies."

Madeleine Hall-Arber

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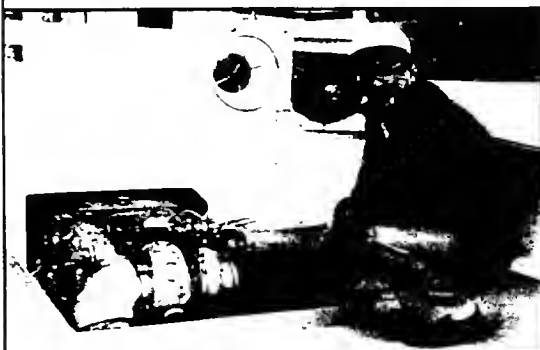
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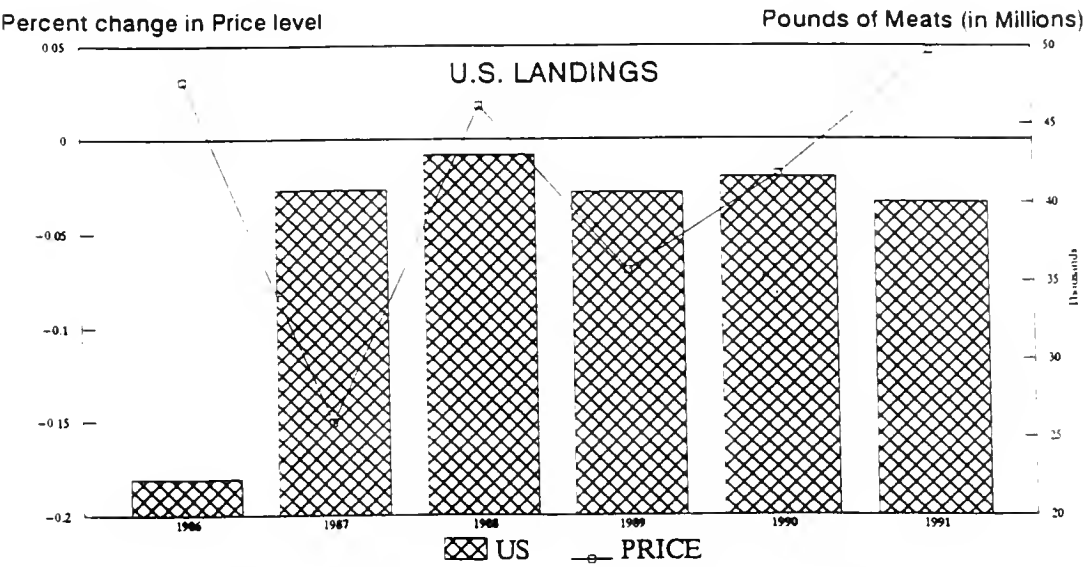
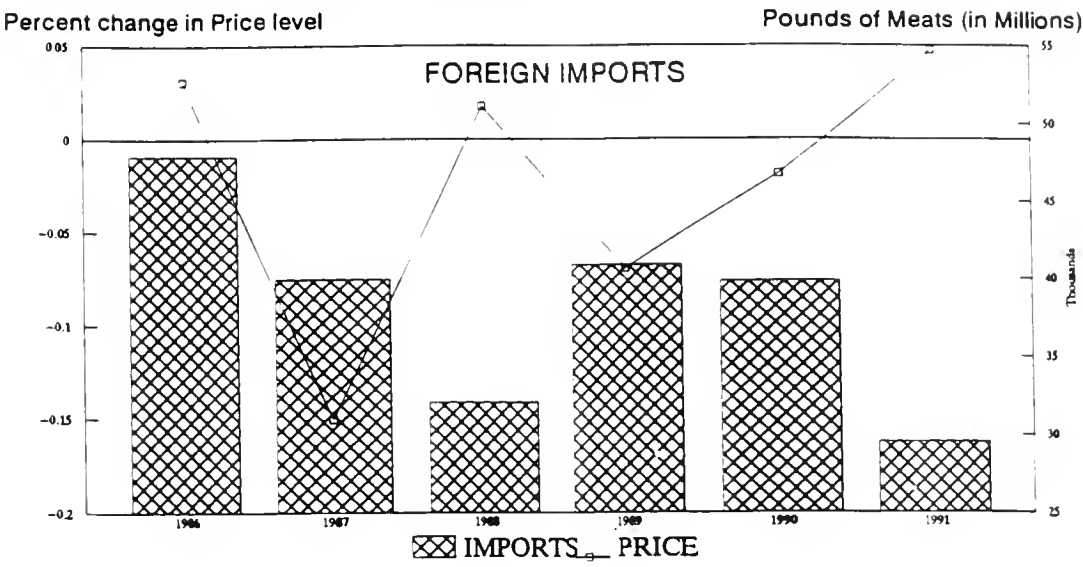
## APPENDIX IV

PRICE SENSITIVITY OF SEA SCALLOPS TO  
LEVELS OF IMPORTED SCALLOPS

The following two charts compare changes in relative price levels of scallops to domestic production of sea scallops and the level of imported scallops. As the charts show, prices react negatively to changes in the amount of sea scallops imported, while domestic production (except in extreme cases as 1986 when production was down to historically low levels) tends to have no effect on price.

While applying here only to scallops, the SIU believes that this relationship generally holds for the majority of fish food products which are sold on world markets. This indicates that fishermen do not realize financial gains when their catches are restricted by management measures so long as no adjustments are made to the import side.

Scallop Price Sensitivity to Levels of U.S. Landings and Foreign Imports



Source: Fisheries of the United States, 1991. Prepared by Fisheries Statistics Division, National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Silver Spring, Maryland: May 1992.

APPENDIX V

ARTICLE FROM ASBURY PARK PRESS  
FEBRUARY 7, 1993

# Outdoors

## Fisheries bureaucracy smothering all opposition

**C**ourt decisions and bureaucratic habit have disparaged the observations and wisdom of fishermen to an alarming level in fisheries management.

A line in the November minutes of the state Marine Fisheries Council is a case in point on bluefish management: "The United Boatmen, representing the north Jersey charter and party boat industry, refuted all National Marine Fisheries Service catch and biomass data providing only anecdotal information in turn."

In other words, what professional fishermen see is entertaining, but not hard, systematized knowledge of what really exists. Only a bureaucrat studying a computer model fed information, and a haphazard survey knows what best scientific information.

The fisheries bureaucracy is using as protective cloak to smother all opposition to the insatiable appetite of central government for more and more power.

### Outdoors John Geiser

New Jersey stood on its states rights and said no to the Mid Atlantic Fishery Management Council and the National Marine Fisheries Service on bluefish in 1989, refusing to accept the 10-bluefish limit in state waters.

The United Boatmen of New Jersey and New York led the resistance, and had what should have been the "best scientific information" to prove the limit would have an adverse socio-economic impact on New Jersey's citizens.

The bureaucrats rent their leisure suits in frustration at a state remembering federalism in defense of its citizens' good. This check ultimately affected the wording of most subsequent fishery management plans, and has culminated in an attempt to convince Congress this year that a penalty must be imposed on any state attempting to stray from future central planning.

NMFS won a court case against the United Boatmen when the latter organization challenged the bluefish management plan. The basis of the decision was the law that makes any information a bureau produces the "best scientific information."

In theory this sounds fine. Any unbiased party would agree that you want to base any decision on the best information as opposed to, say, the worst information.

The fallacy is in the belief that everything a bureaucrat finds, thinks or guesses is in reality the best scientific information.

The best the government has to go on for believing that the reason the public taking more than 10 bluefish is adversely affecting the bluefish stocks is the following from NMFS:

"Continuing downward trends in recreational catches and the index of abundance based on recreational catch and effort data suggest that bluefish abundance has decreased substantially ..."

This is science?

If this were the case then the decline in recreational mackerel landings in the last three years must indicate mackerel stocks are in trouble when, in fact, NMFS claimed the biomass was an enormous two million metric tons in 1990, and the stocks are "under exploited."

The campaign to close the New Jersey gap in the bluefish plan is relentless to the exclusion of true scientific analysis and the utter disregard of fishermen's observations.

NMFS gets its information from a handful of clipboard carriers, part-time students and a few staff statisticians. This does not lead to the accumulation of what should be "best scientific information," if they do not talk to the most qualified observers.

I do not know of one party boat captain, charter boat skipper or trawler captain in the Shore area who was asked last year about his observations of the fall bluefish migration in the offshore waters of the New York Bight.

There has been no reference in

NMFS assessments of the status of the bluefish stocks in the western Atlantic to the extension of their range into northern New England waters or any alteration in habits.

Casual references to the absence of certain sizes of fish have been abandoned or glossed over when these missing year classes have materialized and the bluefish, in fact, "anecdotally," appear to include the biologists' classic representation of a healthy stock that includes fish of all sizes.

Even worse is the belief that the hook and line, the most inefficient harvesting method since man tried to catch fish with his hands, is responsible for a perceived decline, and that further restriction of this method will precipitate a comeback.

In fact, there is more evidence to suggest that the bluefish was not harvested heavily enough by the recreational fishermen than the opposite.

For instance, where have all the vast shoals of sand eels gone that one NMFS biologist said in the 1970s were in danger of extinguishing other

species because of their insatiable appetite for eggs and larvae?

What if bluefish are actually inhibiting the abundance of weakfish, pogies, croakers, and on the New England grounds, (where they are absent for decades) the juvenile groundfish?

As to the latter, Dr. Maine commercial fishermen have told me that they regard the bluefish as a nuisance, if not a plague.

NMFS and others in management must look at the overall picture, and where each species fits. With stocks of sharks, billfish, tuna and other predator species depressed, it may not be in the best interests of the fishery to attempt to maximize stocks of certain lesser game fishes.

It should certainly not be done without the input of professional fishermen.

□ John Geiser is outdoor editor of the Asbury Park Press.

A NATIONAL  
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TO PROTECT,  
RESTORE AND  
CONSERVE  
MARINE  
FISHERIES



THE MARINE FISH  
CONSERVATION  
NETWORK

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- Greenpeace
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- National Coalition for Marine Conservation
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## THE MARINE FISH CONSERVATION NETWORK

The Marine Fish Conservation Network is a broad-based coalition of national, regional and local organizations whose primary goal is to reform and strengthen the management of marine fisheries in order to promote their long-term sustainability.

The Network's most immediate objective is to improve the Magnuson Fishery Conservation and Management Act when the law is reauthorized by the 103rd Congress (1993-94). The Magnuson Act is intended to be the principal mechanism for promoting the conservation and management of our living marine resources. But significant changes are needed to improve the law's effectiveness.

With this goal in mind, the Network has prepared "A National Agenda to Protect, Restore and Conserve Marine Fisheries." A list of organizations supporting this agenda is attached.

### Introduction

Marine fish are a precious natural resource of enormous ecological, social and economic value to the nation. They are an important source of food, recreation and employment, as well as major components of the ocean ecosystem. Healthy marine fish populations can contribute significantly to the national economy and enhance our quality of life, but only if used and managed wisely.

In 1976 Congress passed the Magnuson Act, creating a 200-mile conservation and management zone around the United States coastline and empowering eight regional fishery management councils and the National Marine Fisheries Service, with oversight by the Secretary of Commerce, to act as stewards of America's living marine resources. Seventeen years later, 65 species of fish are overfished, many severely. According to the U.S. Commerce Department, America's marine fisheries

are producing far below their potential, at a cost of more than \$3 billion a year to the nation's economy.

Contributing to the problem of overfishing is the rampant bycatch and discard of unwanted or protected fish and other marine animals caused by the widespread use of indiscriminate fishing gear; the continuing degradation and destruction of wetlands and other critical fish habitats; an inadequate understanding of fish and their environment; and poor monitoring of fishing activities and enforcement of fishing regulations.

The failure to protect marine fish from overfishing and other threats, and to rebuild depleted fish populations back to healthy levels, is compelling proof that there are serious problems with fisheries management under the Magnuson Act. We are urging Congress to address these problems during reauthorization and include amendments that will make conservation the number one priority of fisheries management.

### Priorities for

#### Improved Fish Conservation

The Marine Fish Conservation Network believes substantial improvements in the Magnuson Act are absolutely necessary to protect, restore and conserve the nation's marine fish resources at sustainable population levels and to meet the ecological, social and economic needs of this and future generations of Americans.

The goals of the Network are:

- ▲ Eliminate overfishing and rebuild depleted fish populations
- ▲ Adopt a precautionary, risk-averse approach to fisheries management
- ▲ Reduce conflicts of interest on the fishery management councils
- ▲ Improve conservation of large pelagic fishes
- ▲ Minimize bycatch problems

- ▲ Protect marine habitats
- ▲ Enhance monitoring and enforcement
- ▲ Provide adequate funding for fisheries research and enforcement

## NETWORK GOALS

### Eliminate Overfishing and Rebuild Depleted Fish Populations

As the National Marine Fisheries Service states in the agency's 1991 Strategic Plan: "It is better to prevent overfishing than to suffer the losses necessary to reverse it." But in nearly all cases today, managers are reacting to overfishing, not preventing it.

A basic flaw in the Magnuson Act is that it doesn't clearly define or expressly prohibit overfishing. Instead, the law's key provisions direct managers to prevent overfishing while achieving the "optimum yield" from each fishery, broadly defined as the amount of fish that can be taken in a sustainable manner "modified by relevant social, economic and ecological factors."

In practice, the basic biological needs of the resource are often allotted less consideration than the immediate needs of fishermen. As a result, overfishing is permitted in the name of short-term economic gain. For the same reasons, there are few effective recovery plans for depleted fisheries, hence some severely overfished populations continue to be overfished.

Marine fish are a public resource that no group should be permitted to misuse. Conservation and management measures to prevent overfishing and rebuild depleted fish populations must be given priority over any other considerations. Management plans for each fishery should contain a clear, measurable definition of overfishing as well as measures to prevent that condition from occurring.

In the case of depleted fisheries, recovery plans should establish specific rebuilding goals and specific timetables for achieving those goals. Although there will be short-term social and

economic impacts associated with rebuilding fisheries to a healthy state; over the long-term the increased yield from restored populations will provide the greatest benefit to the nation as a whole, and the fishing industry will be the primary beneficiary.

### **Adopt a Precautionary, Risk-Averse Approach to Fisheries Management**

The framers of the Magnuson Act recognized in 1976 that certainty is a rare commodity in fisheries science and so instructed managers to base their decisions on "the best scientific information available" at the time. They also intended that, in order to prevent overfishing, management measures should contain a built-in buffer against uncertainties in the science and other unknowns.

But in their unending struggle to strike a balance between conservation and the immediate financial interests of fishermen, decision-makers typically choose to err in favor of fishing. "In the face of uncertainty and pressure from the fishing industry," the National Marine Fisheries Service points out (1991 Strategic Plan), "fishery managers have often tended to base their decisions on an optimistic view of the condition of fishery resources. These 'risk-prone' decisions eventually result in overfishing."

Better science would help increase the accuracy and reliability of the information available to managers. But when uncertainty exists, the risk of overfishing can be reduced by giving the benefit of the doubt to fish conservation, i.e., making "risk-averse" decisions, instead of erring towards overfishing.

Conservation and management measures should minimize risk by providing a margin of safety to act as a buffer against overfishing and damage to associated species and ecosystems. Additionally, the burden of proof to demonstrate that damage will not occur should be on those who would exploit fish, not on those charged with conserving them.

### **Reduce Conflicts of Interest on Fishery Management Councils**

When Congress created the regional fishery management council system, it wanted those persons active in the fisheries being managed to be a part of the process so that decisions could benefit from their knowledge and experience. This is both a major strength and a major weakness of the Act.

Council members include fishing vessel owners, commercial fishermen and fishing industry employees with an immediate financial stake in the fisheries they regulate. This amounts to a classic conflict of interest, and because of it, councils have frequently failed to adopt timely and effective management measures.

Fishery management benefits from the advice of active fishermen. But fishermen serving as council members should not be permitted to vote on matters relating to or in any way influencing a fishery in which they have a direct or indirect financial interest. More individuals unaffiliated with any user group, but knowledgeable about fisheries and the marine environment, should be appointed to serve on the councils to enhance their effectiveness as well as to ensure fair representation of the broad public interest.

### **Improve Conservation of Large Pelagic Fishes**

Effective management of the large, ocean-wandering predators - the tunas, sharks and billfish that occupy the top of the ocean food chain - has been especially elusive. As a result of poor management and related overfishing, the large pelagic fishes (defined as "highly migratory species" in the Act) are among the most at-risk fish in the sea.

In the Atlantic, for instance, the bluefin tuna's breeding population has declined 90% since the mid-1970s. The number of adult swordfish has been reduced by half in even less time; the majority of swordfish are caught by fishermen before they've reached reproductive age.

Marlin, killed primarily as bycatch in tuna and swordfish fisheries, are declining in both the Atlantic and Pacific. A modest plan to protect sharks in the Atlantic and Gulf of Mexico that will take effect in 1993 will impose the first-ever federal limits on shark fishing, despite grave concerns that some species may have already been devastated by excessive fishing.

Until 1990, the tuna fisheries (along with their bycatch of billfish and sharks) were unregulated under the Magnuson Act. That year Congress gave the Pacific Ocean management councils authority over tuna, but transferred responsibility for all highly migratory species in the Atlantic Ocean to the National Marine Fisheries Service. NMFS, however, is prohibited from enacting measures to conserve Atlantic large pelagics that are stricter than those recommended by an international commission. Yet throughout its 25-year history, the International Commission for the Conservation of Atlantic Tunas has failed to keep catches at sustainable levels or to stem ongoing declines.

International cooperation to enhance the conservation of large pelagic fishes throughout their migratory range is essential. The U.S. should more aggressively pursue, through ICCAT and other international bodies, the conservation objectives established in the Magnuson Act. But because of the poor record of international fisheries treaties to date, the U.S. must remove any and all constraints on its authority to act unilaterally when more conservative measures are in the best interests of American fishermen and the health of the resources they depend on.

### **Minimize Bycatch Problems**

The use of non-selective fishing gear - essentially, any type of gear that catches large amounts of unintended fish and other marine species - causes intolerable waste and serious conservation problems. Worldwide, discarded bycatch amounts to an estimated 12 to 20 billion pounds of sea life every year, or 20% of the overall catch.

## Enhance Monitoring and Enforcement

To properly manage fisheries, regulations must be enforceable and the total fish catch accurately tabulated. But few fisheries in the U.S. are subject to onboard observer coverage; catch data are supplied by the harvesting vessels or processors, usually on a voluntary basis. Consequently, this information is generally inaccurate and incomplete.

More precise and reliable data on catch and effort, as well as fishery-independent information, must be made available to fishery scientists for the purpose of assessing population sizes, and to fishery managers for the purpose of regulating fishing activities.

As management plans are now written, most regulations must be enforced at sea. With a small force of agents burdened with a mounting number of rules to enforce and fishermen to enforce them upon, violators know the chances of being caught are slim. As a result, compliance with fishery laws is poor in some fisheries, almost non-existent in others.

Funding for monitoring and enforcement activities must be increased. A universal licensing scheme is needed to give managers the information they need on who's fishing when, where and how and what they are catching. A comprehensive at-sea observer program to monitor commercial fisheries would help provide unbiased and detailed information on fishing activities as they occur. The presence of observers on fishing vessels is necessary for adequate enforcement. In the future, managers should be required to rely less on measures that must be enforced offshore and more on rules that are enforceable at the dock or at the point of sale.

pressures and other human activities - could become the greatest long-term threat to the future viability of coastal marine fisheries. Damage to estuaries, wetlands, seagrass meadows, reefs and river systems are leading factors in the decline of many shure-dependent and anadromous species.

Major threats to fish habitats are:

- **Destruction.** Over half our coastal wetlands, essential habitat to 75% of the nation's marine fisheries, have been destroyed.
- **Pollution.** Contaminants effect spawning behavior, survival of young fish, and the incidence of deformities and tumors. They also threaten human health.
- **Nutrient overload.** Agricultural runoff and dumping of untreated sewage triggers massive increases in algal growth, choking off sunlight to bottom-dwelling organisms and depleting the water of life-giving oxygen.
- **Water diversion.** In some river systems, dams have eliminated 80-100% of the migration routes for salmon, striped bass, shad and other marine species that spawn in fresh water. Excessive diversions of water from bays and estuaries destroy important spawning and nursery grounds for numerous coastal fish.

The Magnuson Act gives neither the National Marine Fisheries Service nor the fishery management councils direct control over these activities, even though they may severely reduce fish abundance.

The U.S. should adopt and implement a strong national habitat protection program to preserve the productive capacity of fish habitats. The program should include research to quantify fishery-related habitat values and require certification that federally-approved projects will not harm essential fish habitats. The National Marine Fisheries Service should have authority to modify, restrict or prohibit projects or activities which will alter, degrade or destroy essential fish habitats.

Examples of non-selective gear include large high-seas drift nets that catch virtually anything that tries to swim through the netting, or trawl nets that are used to drag the ocean bottom, scooping up all species in the path of the net. Perhaps the most egregious example is the Gulf of Mexico shrimp trawl fishery, where 9 to 11 pounds of juvenile fish are caught and thrown overboard for every pound of shrimp that is taken.

The astronomical number of fish killed as bycatch, usually unreported, is not just a problem of waste. Bycatch contributes to overfishing. For instance, red snapper in the Gulf of Mexico one of over a hundred species caught in shrimp trawls, is severely depleted primarily because of the enormous number of young fish killed as bycatch.

The Magnuson Act is largely silent on the subject of bycatch and dead discards. Bycatch is restricted only where it threatens a species protected under a non-fishery statute (e.g. dolphins and sea turtles) or where it includes species highly valued and sought after by competing fishermen.

The Magnuson Act should include a definition of undesirable bycatch and make it a national policy to minimize the negative impact of bycatch on fish populations and the marine ecosystem. Researchers should accumulate better data on the extent of bycatch and its impact in each fishery, and managers should include provisions to reduce the incidental capture of fish and other marine animals in all fishery management plans.

More research needs to be conducted in the area of gear selectivity, including the development of bycatch-reducing technologies. Management strategies should include incentives for fishermen to increase gear selectivity or use more selective methods of fishing.

## Protect Marine Habitats

The continuing loss and degradation of fish habitat - to pollution, development, population



### Provide Adequate Funding for Fisheries Research and Conservation

(1) the 153 species of fish whose status has been assessed by the National Marine Fisheries Service, 42% are overfished. But the status of more than a third of the species under Magnuson Act jurisdiction is unknown due to lack of funding for basic research. Even where general population trends are known, the data are often imprecise. This imprecision in assessing fish abundance undermines the ability of managers to respond to overfishing in a timely and effective manner.

There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of harvest, both commercial and recreational, fish discarded as well as landed. As managers propose quota-based and limited entry management programs, the need for more accurate and precise information becomes acute.

These research and information shortfalls are largely the result of chronic underfunding. So is the poor state of habitat and ecosystem-based studies. Because fish do not live in a vacuum, we need to better understand the interdependent relationships in their environment. This means studying predator/prey interactions (both fish/fish and mammal/fish) and the effects of selectively and intensively removing certain species from an ecosystem. Research is needed to assess the effects of altering the physical and chemical environment on fish behavior, growth, feeding and reproduction.

Essential research has been held up by years of inadequate funding. Funding for management-related scientific research and data collection should be increased, along with funding for monitoring and enforcement. To the extent that new appropriations are not available in sufficient amounts, the needed money should

be obtained through re-prioritizing existing funds and developing new, innovative sources of funding.

Presently, fishermen pay no fees to the federal government to exploit publicly-owned resources. Congress should consider user fees and/or excise taxes on the landed value of fish. Compensatory revenues should be deposited in a trust fund dedicated to supporting research, management, enforcement and other fundamental fisheries programs.

### Conclusion

Too many of the nation's economically important commercial and recreational fishes are depleted or in decline, producing far below their biological potential. While each year new species are added to the growing list of those that are overfished, efforts to restore depleted populations are slow and ineffective.

The price we are paying for poor management is more than we can afford. In New England alone, the annual cost of overfishing the nation's oldest fishery - cod and flounder - is estimated at \$350 million. That's almost twice the annual budget of the National Marine Fisheries Service. Nationally, commercial and recreational industries, jobs, lifestyles, quality of life and the quality of our environment hang in the balance.

The Marine Fish Conservation Network urges Congress to act forcefully to strengthen the Magnuson Fishery Conservation and Management Act to protect, restore and conserve our marine fisheries.

\* \* \* \* \*

*For more information, contact the Steering Committee, Marine Fish Conservation Network, 1725 DeSales Street, N.W., Suite 500, Washington, DC 20036, or any one of the network member organizations.*

**Pietro Parravano**  
President

**David Allen**  
Vice-President

**John Greenville**  
Secretary

**Don Sherer**  
Treasurer

**PACIFIC COAST FEDERATION  
of FISHERMEN'S ASSOCIATIONS**



**W. F. "Zek" Grader, Jr.**  
Executive Director

**Nathaniel S. Bingham**  
Harbort Director

**Glen H. Spain**  
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**Much Farro**  
Director of Endowment  
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**BY FAX**

21 April 1993

The Honorable Thomas J. Manton  
Chairman  
House Subcommittee on Fisheries  
1334 Longworth Office Building  
Washington, D.C. 20515

RE: H.R. 780, Legislation to Authorize Funding for the  
Magnuson Fishery Conservation & Management Act of 1976

Dear Chairman Manton:

The Pacific Coast Federation of Fishermen's Associations (PCFFA), representing working men and women in the west coast commercial fishing fleet, appreciates the opportunity to provide you with this short statement for the record at today's hearing on the Magnuson Act. PCFFA respectfully requests the opportunity to provide a more detailed written statement to your subcommittee on the reauthorization of Magnuson and invites and requests you and the members of the Fisheries Subcommittee to hold one or more field hearings on the west coast this year prior to action being taken on the Magnuson Act.

PCFFA's principle concerns today are:

**I. Shoreside Preference.** PCFFA joins with the American Seafood Harvesters Association and other fishing groups throughout the nation in its support of preferences being given to the small, traditional fleets delivering catches to shoreside processors. PCFFA is also greatly concerned with the decision last Thursday by the Department of Commerce to overturn the Pacific Whiting allocation recommended by the Pacific Fishery Management Council. The Commerce decision, favoring large corporate factory trawlers, will hurt the small fleets supporting shoreside processors and workers along the Oregon and northern California coast, an area already impacted by high unemployment,

STEWARDS OF THE FISHERIES

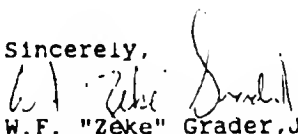
The Honorable Thomas Manton  
21 April 1993  
Page Two

and increase the amount of salmon taken incidental to trawling operations. The latter is to the detriment of the salmon resource and ocean commercial (troll) and recreational salmon fisheries. If Commerce does not revisit this decision, then it may be appropriate for Congress to spell out in legislation preference for our small traditional fisheries and the shoreside industries they support.

II. Habitat Protection. With the knowledge that fish harvest may be just one of a number of factors affecting fish populations -- this is certainly the case with the salmon fishery, PCFFA believes it is patently obvious that regional councils and the National Marine Fisheries Service must have consultation authority, such as that provided lead agencies under the Endangered Species Act, requiring entities whose activities affect fish habitat and fish production to consult with regional councils/NMFS when such activities or development will affect a fishery conducted pursuant to a federal FMP. Providing the regional councils/NMFS such authority prior to a stock becoming a potential candidate for listing under the ESA makes good economic sense -- both from the standpoint of the fishing industry which relies on the harvest of healthy stocks and from the standpoint of those industries/businesses affecting fish populations/fish habitat whose activities will be restricted once a candidate fish is declared threatened or endangered.

Again, PCFFA appreciates the opportunity to provide these brief comments and asks that it be allowed to provide the subcommittee more detailed comments on the reauthorization of the Magnuson Act.

Sincerely,

  
W.F. "Zeke" Grader, Jr.  
Executive Director



National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 P.O. Box 21668  
 Juneau, Alaska 99802-1668

December 16, 1992

MEMORANDUM FOR: John Oliver  
 Director, Budget and Planning Office

FROM: Steven Pennoyer  
 Director, Alaska Region

SUBJECT: FY 93

Since we are not having a BOD meeting, I guess I had better put in my view of the AKR budget status and funding needs. Norris Jeffrey has already sent you a request for the AKC, and I concur with the priorities of where they would put any additional dollars although I believe more funding would be warranted given the immense data needs of managing fisheries the size of those off Alaska.

The AKR program has been behind the curve of domestic fishery development in Alaska since 1989. We have not caught up. We do not have the people now to process our regulatory actions in a timely fashion or manage our myriad of TAC's, bycatch caps and allocations. As we move toward new systems of limited access, the workload problems will be exacerbated in the short term (next 3-5 years). The point is, we cannot retrench because there is no base to retrench to--the AKR has no slack.

The accounting in the '93 budget is confusing, to say the least, but as best I can unravel it, we are down some 600k from what we must have with some important caveats:

Congressional non pass-thru cuts	170
NMFS 10% non pass-thru cuts	200
<sup>1</sup> Unfunded items	<u>200</u>
	570

This assumes the allocation of some "new" monies I haven't seen yet:

AK Groundfish monitoring	400 (-10%?)
<sup>2</sup> Transboundary Rivers	300

<sup>1</sup> Rent increases in new office, salary increases.

<sup>2</sup> From International Commissions



The AKR must fund Bering Sea Fishermen's Association 300k (although I plan on assessing them 5% and utilizing the 15k elsewhere in AKR), and I have included this in my estimate. If we do not get 600k more in our allocation, we will probably have to RIF 7 people for the balance of the year--and I cannot accommodate this type of reduction and still manage Alaskan fisheries.



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 P.O. Box 21668  
 Juneau, Alaska 99802-1668

DEC 16 1992

Mr. Henry Mitchell  
 Executive Director  
 Bering Sea Fishermen's Association  
 725 Christensen Drive  
 Anchorage, Alaska 99501

Dear Henry,

I am pleased to announce that we have available \$270,000 to grant to the Bering Sea Fishermen's Association to help prepare the business plans needed by western Alaskan villages applying for community development quotas now available under the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea/Aleutian Island Area.

Enclosed is a packet of information, instructions, and forms to use in preparing your proposal for the grant.

The NOAA process for reviewing and awarding an application for a grant takes about 75 days, so please submit your proposal (signed original and two copies) as soon as possible.

If you have any questions about this grant or the application process, please contact Aven Andersen at 907-586-7228.

Sincerely,

Steven Pennoyer  
 Director, Alaska Region

Enclosure



### Alaska Crab Coalition Report on the International Conference on Responsible Fishing

On May 6-8, the Mexican Secretaria de Pesca (SEPESCA) and FAO hosted the International Conference on Responsible Fishing (RFC) in Cancun, Mexico. The meeting was attended by 67 countries, many of which sent high level delegations. The U.S. delegation was led by Ambassador David Colson.

The Alaska Crab Coalition was invited by the U.S. Department of State to participate in the Conference. The ACC provided its Executive Director to the U.S. Delegation to serve as an Advisor during the course of the Conference.

Key among the consensus points of the Cancun Declaration are the following:

1. The need to establish an International Code of Conduct for Responsible Fishing.
2. The need to analyze the research and technical needs of countries to best utilize and protect resources without damaging the environment and explore ways to transfer technology and promote scientific and technical cooperation.
3. States should take steps to improve management systems as part of the practice of responsible fishing. They recognize the principles of sustainable utilization of marine living resources as the basis for sound fisheries management policies. In this regard, they consider as one of the most important objectives the application of policies and measures which result in a level of fishing effort commensurate with the sustainable utilization of fisheries resources.
4. States should improve scientific knowledge and promote and enhance collection of data necessary for the conservation and sustainable utilization of fisheries resources.
5. States should promote the development and use of selective fishing gear and practices that minimize waste of catch of target species and minimize bycatch of non-target species.
6. States in the design and subsequent introduction of new fishing gear and practices, should take into account qualified assessments of impacts on the sustainability of fisheries.
7. States should take necessary measures to protect wetlands and other areas of critical fisheries habitat from all kinds of degradation.

The Cancun Conference built upon the extensive principles and commitments developed at the final meeting of the Preparatory Committee for the United Nations

Conference for Environment and Development (UNCED) in New York during April and May. The Government of Mexico was to convey the "Cancun Declaration" to the Secretary-General of UNCED in Rio de Janeiro during the week of June 8-14.

-- Arni Thomson, Executive Director  
Alaska Crab Coalition

### Meetings

Third Biennial International Symposium on Fish Physiology, Toxicology, and Water Quality Management. November 3-5, 1992 at the Sino-American Culture Research Center at Nanjing University, Nanjing, China. Sponsored by: U.S. Environmental Protection Agency; American Fisheries Society; Chinese National Environmental Protection Agency; National Science Foundation, PRC; Society of Ichthyology, PRC.

For further information, contact Dr. David J. Randall at the University of British Columbia, Department of Zoology, 2075 Westbrook Mall, Vancouver, B.C. Canada V6S 1W5, Telephone 604/228-5709.

The Ninth Symposium of Astacology was held 5-10 April 1992 in Reading, England. This represented the 20th anniversary for the International Association of Astacology. Over 110 crayfish biologists and culturists were present for 65 paper or poster presentations on crayfish culture, biology, physiology, parasites and diseases, taxonomy, and management. Culture potential of dwarf Mexican species and giant Australian species were discussed. Important commercial species in the USA (red swamp, white river, and signal crayfishes), in Europe (noble, narrow-clawed, and white-clawed crayfishes), and in Australia (yabbie, red claw, and marron crayfishes) were discussed.

The IAA meets every 2-3 years. The next international symposium is scheduled for 10-15 April 1994 in Adelaide, Australia.

Abstracts for the reports presented at the Reading symposium are being printed by IAA for distribution to members. Papers will be published in "Freshwater Crayfish, A Journal of Astacology" in the coming year. Inquiries about IAA and membership should be directed to: International Association of Astacology, PO Box 44650, University of Southwestern Louisiana, Lafayette, LA 70504 USA Phone (318) 231-5239, FAX (318) 231-5395

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# GREENPEACE

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August 5, 1993

The Hon. Thomas Manton  
 Chair  
 Subcommittee on Fisheries Management  
 579 House Annex Two  
 Washington, DC 20515

Attn: Lori Rosa

BY FACSIMILE

Dear Chairman Manton:

Thank you for the opportunity to testify before your subcommittee on Fisheries Management on April 21, 1993 on the Magnuson Act Reauthorization. I received a list of questions from you and my responses are in the order that the questions were listed.

1. Although there are some fisheries that do not have fishery management plans, the real problem is that most fishery management plans in place have not prevented overfishing. The Magnuson Act states clearly that fishery management plans should prevent overfishing but there is no accompanying penalties for failure to do so in a fishery management plan.
2. We believe there is some merit in drawing clearer distinctions between the science and allocation decisions that are currently made by the councils. We also believe that allocation decisions should be based on all the needs for fish not just commercial fishing needs, (food needs for stellars, natural mortality and subsistence needs).
3. The answer to this question depends on your definition of fundamental change. Although we favor retaining the council system, we believe that the councils need structural change. The composition of the council membership must change from the heavy user dominated to more equitably balanced, their discretion to follow or not follow standards within Magnuson must be restricted, financial conflicts existing within the council membership and the decisions they must make has to be reduced. Some of the new direction that we believe the council must follow should include, but not limited to, the following, required prevention of overfishing, mandatory preference for selective gear in allocation decisions and allowable catch levels that are far below biological estimates of fish populations. We also favor adding citizens suits and petitions provisions that will



encourage greater enforcement of the act and its provisions.

4. The best way to ensure a plentiful long term supply of seafood is to come up with ways to make conservation the driving force in US fisheries management so that fisheries stop catching more fish than can be replaced by natural reproduction.

5. We feel that the government should play a coordinating role but that the fishing industry should bear the cost of the fishing assistance program.

6. Until the fishery management councils display more responsibility towards conservation, the Secretary must either exert more control over their actions or some discretion currently afforded the councils in their decisions must be removed.

7. The nomination process for Council seats is adequate. The failure comes in the final selection by the Secretary of Commerce. The political pressure, by the Congressional delegations, on the Secretary of Commerce has repeatedly kept non users from being appointed to the councils. There is one exception to that rule.

8. No opinion

9. See answer to 7.

10. On many councils, we believe that, on many councils, conflict of interest is a tremendous problem. When council members are faced with a choice between voting for a higher quota that will make them millions of dollars or for conservation, the choice is obvious, conservation takes a back seat.

11. We believe that exemptions afforded council members from federal conflict of interest laws ought to be repealed. They are paid federal employees and therefore should be treated as such.

12. NMFS should work to better its research efforts. Our recommendations here are to force the fishing industry to bear more of the costs of observers freeing up additional federal funds that can be used for research. In addition, the federal government should form greater partnerships with fishermen to take advantage of their abilities to help increase our overall knowledge

13. Council information is varied. The problem is with the discretion afforded the council in how they use information supplied to them. We would favor changes that would require the council to state their reasons for ignoring the scientific advice if they chose to do so.

14. No opinion other than I hope that they could do more.

15. The National Marine Fisheries Service continues to be grossly underfunded. It seems as if Clinton's concern for increasing protection for natural resources stops at the water's edge. That must be changed.

16. not applicable

17. We believe that additional costs born by the industry should be done equitably and that any additional revenues collected should be funnelled through a mechanism that ensures that the revenues collected are used for the purposes for which they were intended, fishery management.

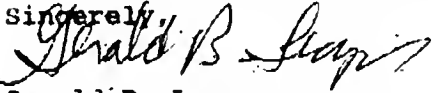
18. Yes. the Councils and the Secretary need more authority to protect habitat. We would like to work closely with industry to develop these changes.

19. We believe that authority should be returned to the Councils.

20. No opinion

Thanks again for the opportunity to testify and I look forward to working with you and the rest of the committee throughout the rest of the reauthorization of the Magnuson Act.

Sincerely,



Gerald B. Leape  
Legislative Director/Ocean Ecology  
Greenpeace

TESTIMONY OF CARL L. ROSIER  
COMMISSIONER  
ALASKA DEPARTMENT OF FISH AND GAME  
BEFORE THE  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
H.R. 780  
June 16, 1993  
Washington D.C.

Mr. Chairman and Members of the Committee, thank you for this opportunity to come before you today to discuss one of the nation's most important pieces of oceans legislation, the Magnuson Fishery Conservation and Management Act (the Act). I am Carl L. Rosier, Commissioner of the Alaska Department of Fish and Game.

The Act is perhaps the most important piece of fisheries legislation passed by Congress. The Act provides the framework for conservation, management, and allocation of the fisheries off our shores. It established the regime under which the United States gained control of its fisheries, which led to the Americanization of the immense groundfish fisheries off Alaska.

But these same successes, and the rapid development of the domestic offshore fleet in response to the policy of Americanization, have led to many of the management and allocation issues which will be the subject of this next reauthorization of the Act. Interestingly

enough, there are striking similarities between the issues which were facing the nation when the Act was first passed and those facing us now.

Once again, national concern about the environment and the health of our fisheries resources, coupled with a growing awareness about the problems of bycatch, discards, and waste are front page issues. Once again, competition between a mobile at-sea factory trawler fleet and a local shorebased industry are the subject of national debate; and escalating concerns about fishing rights, jobs, and the economic health and stability of our coastal communities are hot topics on the waterfront. And once again, the question of who owns our nation's fisheries resources, tied to the age-old problem of too few fish and too much harvesting capacity, is again a major source of contention. Only this time, it's not a matter of the U.S. fleet versus the foreign fleets; this time the issues are more difficult because we are fighting amongst ourselves.

My comments today regarding the Act will focus on three major issues: 1) the need to strengthen the conservation standards of the Act to further promote the longterm health of our nation's fisheries resources and address the problems of discard waste and bycatch; 2) the importance of fisheries in the economies of our coastal communities and the need to reaffirm our national goals to protect and enhance those local fisheries economies; and 3) the importance of maintaining and strengthening the regional council process.

The Importance of Fisheries to Alaska

In order for you to understand the significance of these issues to Alaska, let me first provide you some information about the importance of our fisheries to Alaska and the nation.

If Alaska were a separate nation, it would rank among the world's top ten in total fish harvest. In 1992, the catch off Alaska totalled over 5.2 billion pounds of seafood. This was about half the national harvest and over 3 times greater than the amount landed by fishermen in the Gulf of Mexico, the nation's second ranking region. Alaska's 1992 catch was up about 6% from the year before.

The ex-vessel value of Alaska's commercial fisheries has grown from an estimated \$565 million in 1985, to a record \$1.8 billion in 1988. The first wholesale level was estimated at \$3 billion in 1988. Preliminary figures indicate the 1992 ex-vessel value was roughly \$1.5 billion.

In a state with little or no manufacturing-based economy, the seafood industry is the largest private, basic industry employer, providing more than 77,000 seasonal jobs which equal 33,000 year-round direct and indirect jobs. Total investment is estimated at roughly \$4 billion, and the payroll is the largest in the state among private industries: approximately \$600 million. Dutch Harbor-Unalaska ranked number one in the nation for seafood

landings in 1992, with total landings in excess of 736 million pounds, nearly 3 times greater than the next largest non-Alaska port. Seafood landed at Dutch Harbor-Unalaska was worth about \$194 million to commercial fishermen, about 25% greater than seafood landed in New Bedford, Massachusetts, the highest ranking non-Alaska port in the country. Two Alaska communities were among the top ten volume ports in the United States in 1992. In one region of the state, the seafood industry accounts for almost 90% of the private sector income, and many of our coastal communities are almost entirely dependent on commercial fisheries for cash income.

The economic and social significance of fisheries to Alaskans underscores the importance the state places on the effectiveness of the Act to govern domestic fisheries. While the Act has been a remarkable success since originally passed in 1976, the transfer from a foreign dominated fishery to a fishery which is almost wholly domestic created new issues and management problems not foreseen at the time of passage.

#### The Need to Conserve Our Fish Stocks and Fully Utilize Harvested Resources.

The State of Alaska does not condone the waste of fish. In fact, state law makes it a criminal offense for any individual to engage in the wanton waste of seafood or seafood products. Similarly, the nation has an overriding interest in seeing that public resources are properly utilized. This includes controlling and reducing

bycatch, and eliminating the waste associated with economic discards.

Economic discards are fish which are harvested in a target fishery but not processed because they are the wrong size, the quality is poor, or for some other economic reason. These fish could be processed into ancillary products such as meal and oil, and some of their value retained. Instead, they are simply thrown away. An example would be undersized pollock which are taken in a directed fishery for pollock but discarded due to their size.

Economic discards, and the biological and economic losses resulting from this practice, are a major concern to the State. In 1991, pollock discards totalled 111,313 metric tons (mt) in the directed pollock fishery in the Bering Sea. This was approximately 245,400,000 pounds of discarded fish, which was roughly equivalent to approximately six times the entire commercial harvest of salmon in Washington State, or the entire combined commercial harvest of herring, halibut, and shellfish in Alaska in 1990. These economic discards represented approximately \$35 million in lost value to the nation for this one fishery.

Bycatch differs from economic discards. Bycatch is a term for fish or shellfish taken in a directed fishery which is targeting on a different species. The use of nonselective harvesting methods such as trawls, longlines, and pots often yields catch composed of a variety of species including both target and incidental (bycatch)

species. Conflicts arise when bycatch in one target fishery reduces the amount of resource available to a different directed fishery. In extreme cases, bycatch of species or stocks with low or declining populations can lead to conservation problems for those species or stocks. Incidental catch of halibut, Tanner crab, king crab, herring, and salmon have been of particular concern in the groundfish fisheries off Alaska.

Out of our growing concern regarding the increasing problems of bycatch control and discard waste, the State commissioned a report to document the 1992 levels of bycatch and economic discards in the Gulf of Alaska and Bering Sea/Aleutian Island groundfish fisheries. The report relies entirely on NMFS data taken from vessel operator/processor reports. It does not look at data from the federal observer program. This is an important distinction. Generally it means that the data presented in the report are very conservative, because in most instances bycatch and discard data are higher in observer reports. For comparison, the pollock discard level in the Bering Sea reported by operators was 47,772 mt, while federal observers reported 113,000 mt (249,000,000 pounds), a 237% difference.

The findings in this report are startling:

- \* Over 507 million pounds of groundfish were thrown away as bycatch or as economic discards, 462 million pounds came out of the Bering Sea/Aleutian Islands (BSAI) alone.



- \* In one fishery, the BSAI Rocksole trawl fishery, 61% of the harvest was discarded, as well as 2 million crab.
- \* In BSAI trawl fisheries, 47% of the discards consisted of the species being targeted. In fixed gear, 2% of the discards consisted of the species being targeted.
- \* The mortality of halibut taken as incidental bycatch totaled over 20 million pounds, 14 million pounds were taken in the BSAI.
- \* The average size of halibut taken as bycatch in the BSAI trawl fisheries was 0.94 pounds per halibut; in the pot fisheries the average size was 2.16 pounds per halibut; and, in the hook and line fishery the average size was 11.94 pounds per halibut.
- \* 20.4 million crab, almost 100,000 salmon, and over 1 million pounds of herring were discarded.

What these data show is that the losses due to economic discards and bycatch clearly constitute enormous waste and are a major loss to the nation. Although there are many reasons why bycatch and discards occur, losses of this magnitude must not be condoned. The general public in Alaska understands this very clearly since in Alaska the state will fine and imprison individuals who engage in the wanton waste of harvested fish and game resources. The wanton

waste of our fisheries resources should not be tolerated as a matter of national public policy, and would not be tolerated if the activity was occurring in state waters.

The State, and the North Pacific Fishery Management Council, have often been frustrated by Secretarial interpretations of the Act which emphasize harvest efficiency and economic return over conservation. Economic discards and bycatch are treated more as a cost of doing business than as a form of waste. By focusing on economic efficiency the Secretary has made it difficult for regional councils to effectively address the problems of discard waste and bycatch.

During the next reauthorization of the Act, Congress can provide the leadership to address this problem by strengthening the conservation provisions in the Act, and providing a priority for use of the "cleanest" gear and fishing practices which are available for harvesting a particular fishery resource. In addition, the Act should be amended to discourage economic discards and provide the NMFS and the Councils the necessary legal and technical tools to design a comprehensive approach to bycatch management.

The Need to Protect Our Coastal Communities and Build a Stable Shoreside Economy

The purpose of creating 200-mile fishery management zones worldwide was to provide nations, people, and communities immediately adjacent to fishery resources the ability to protect and benefit from those resources. Protecting our coastal fisheries from the impacts of a large distant water fleet of foreign vessels operating off our shore was the driving force behind the passage of the Magnuson Act. Concern for the economies of the nation's coastal fishing towns is once again on the front burner of the national fishery management agenda.

On the west coast, overcapitalization in the offshore segment of the U.S. fleet is threatening the very industry and coastal communities the Congress was trying to protect at the time of original passage of the Act. This rapid overcapitalization, and the resulting preemption of coastal fisheries, has come about because construction of the fleet was subsidized and encouraged through a combination of foreign financing subsidies, federal loan guarantees, and liberal interpretations of the anti-reflagging act by the Coast Guard.

The problem is further amplified because the offshore component of the industry is operating outside the requirements that other segments of the industry must comply with. The offshore fleet is exempt from paying minimum wage, and pays virtually no tax on the

fish caught. They are operating under a more lenient regulatory environment, with less stringent requirements for air and water quality, and virtually no worker health and safety enforcement. No other nation in the world has constructed a distant water fleet to harvest its own resources to the detriment of its existing shorebased fleet and dependent coastal communities.

The State of Alaska has been supportive of allocations to prevent pre-emption of the fishery by one segment of the industry over another, and is supportive of implementation of limited access systems for Alaska offshore fisheries if the nature of the fleet can be maintained and the economies of coastal communities can be protected. The State believes that the goal of achieving economic efficiency in the harvest of our fishery resources is important, but should be balanced along with the need to conserve stocks and achieve full utilization of harvested resources, the need for balance among the various segments of the industry, the desirability of maintaining diversity in the fishery and the industry, and the economic and social needs of coastal communities. The goals, purposes, and national standards should be amended to require this balance, minimize preemption of one sector of the industry over another, and reinforce the national intent to protect and enhance the economies of our coastal fishing communities.

A recent innovative program initiated by the North Pacific Fishery Management Council to enhance local fisheries economies in rural Alaska is the Western Alaska Community Development Quota (CDQ)

program. This is a joint program between the State, the NPFMC, and the Secretary which sets aside relatively modest amounts of quota (7.5% of the Bering Sea pollock quota) to promote fishery based economic development. Over 50 Bering Sea communities, most with a mixed economy based largely on subsistence, are participating in the program. The communities involved in this program have some of the highest rates of unemployment in the country, some of the lowest average per-capita incomes in the country, and some of the highest costs of living in the country. These communities are immediately adjacent to one of the nation's largest fisheries, and have benefited least from that fishery. The CDQ program holds the first true opportunity for many of these communities to develop a stable, long-term economy. By successfully implementing the CDQ program we hope to reduce dependence on government transfer payments and services in these communities, and provide a solid benefit to the nation by promoting new economic growth and reducing the drain on both the State and federal treasuries.

To date, six CDQ corporations have formed representing all of the eligible Bering Sea communities. These corporations, which are composed of fishers from eligible communities, have entered into joint venture partnerships with major U.S. seafood companies and have successfully harvested their 1992 pollock allocation of roughly 100,000 mt, and the first half of their 1993 allocation. This has resulted in a significant increase in direct local employment, in the creation of several fisheries training and educational programs for local residents, and in capitalizing

numerous fisheries development projects in the region. Under the present plan, the pollock program will last through 1995.

#### Strengthening the Regional Council Process

Section 302 of the Act establishes the eight Regional Fishery Management Councils (the Councils). Recently, the Councils have come under increasing criticism. These complaints range from concerns over the make-up of the individual Councils, to real or perceived conflicts of interest on the part of Council members, to the inability of some Councils to address important management and conservation issues. Some of these criticisms are particular to one or two Councils, others are more general and are aimed at the Council system as a whole.

The North Pacific Fishery Management Council (NPFMC) is the regional council managing fisheries off Alaska. As a consequence, the status of the NPFMC is of paramount importance to the state. However, because criticisms levelled at the council system as a whole can affect the management of fisheries off our shores, the State of Alaska places a high premium on the effective operation of the entire regional fishery management system.

One of the most serious complaints about the Councils is the quality of representation and perceived conflicts of interest on the part of individual Council members. Presently, the Act calls for the participation of persons who are knowledgeable and

experienced in fisheries managed by the Councils. This will, by definition, result in some perceived level of conflict of interest. However, the State believes that the expertise which is brought to the fishery management system by such individuals is an important and critical component of fishery management. These are people who understand, in a very practical sense, how the fishery operates and whether or not management measures will succeed on the grounds. Unless the Congress decides to place fishery management and allocation in the hands of faceless bureaucrats, ivory tower academics, or persons who know nothing about the fisheries, there will be at least the perception of conflict of interest on the Councils.

It is important to remember that Congress has addressed this matter in a number of amendments to Section 302 by strengthening the financial disclosure provisions of the Act and requiring the Secretary to ensure a fair and balanced apportionment of interests when making Council appointments. Implementation has been poor. The performance of the Councils is determined by the quality of the individuals involved. Appointees to the Councils carry a very important responsibility, and should be of the highest caliber. The Secretary has the authority to reject recommended appointees, and a screening process to judge the ability of the candidates. It is ultimately the responsibility of the secretary to ensure that the Council appointees are qualified for the job and that there is balanced representation. The provisions already in the Act provide the means to help address the conflict of interest issue, but

ineffective implementation by the Secretary has kept this issue alive.

The Councils are also coming under criticism for not resolving important conservation and management issues. In much of the United States fish stocks are severely depressed, fisheries are overcapitalized, and management programs are ineffective. Critics are calling for a major overhaul in the nation's fishery management system to correct these problems. We believe that these criticisms are more appropriately directed at the Secretary and the NMFS.

In the North Pacific region, the overall record of the NPFMC is one of strong support for fishery conservation, often at the expense of the economic self-interest of the individual members. Most importantly, the actions taken by the NPFMC to conserve the resource have consistently had the overwhelming support of the Alaska members on the Council.

For example, it was the North Pacific Fishery Management Council which led the fight to prohibit roe stripping and instituted the nation's first comprehensive domestic observer program. It is the NPFMC which has placed a moratorium on new vessels and entrants into the fishery to address the overcapitalization problem, and begin the painful process to rationalize the nation's largest fishery. It is the NPFMC which is trying, despite resistance from NMFS, to implement a rebuilding program for depressed stocks of Pacific Ocean Perch and other rockfish. And, it is the NPFMC which



is presently trying to institute real-time fishery data gathering programs to enhance in-season management, implement further measures to reduce bycatch, and improve fishery enforcement; while at the same time trying to reach a fair allocation balance among the various sectors of the fishing industry--trawlers, longliners, pot fishermen, shorebased or offshore processors, small boats, and big boats.

Perhaps most importantly, it is the NPFMC which, out of concern for the long-term health of the resource, has maintained the 2 million ton cap on Bering Sea harvests. The Council has remained steadfast on this issue despite repeated attempts by some segments of the fishing industry, supported by advice from some elements within NMFS, to raise the cap beyond this level. Similarly, when confronted with the dramatic overfishing in the Bering Sea donut hole by foreign fleets, it was the NPFMC which closed the Bogoslof pollock fishery inside our 200-mile zone, moved to prohibit U.S. vessels from fishing in the donut hole, and called for a moratorium on all fishing in the Central Bering Sea to protect the stocks. If it had not been for the action of the NPFMC to maintain the 2 million ton cap Bering Sea stocks would be in poor shape today, and the damage done by the donut fisheries would have had even greater effects on fisheries in the U.S. zone.

The other criticism which is levelled specifically at the NPFMC is that the Alaska majority controls the Council process, and works in concert to disadvantage those participants in the fishery which

come from outside the state. The example most often cited is the inshore/offshore allocation issue.

An analysis of the record shows otherwise. Of 905 recorded votes on motions and amendments during the 24 NPFMC meetings from January 1988-September 1992, only 14 votes found the six Alaska appointees in unanimity. For the other 891 times, the votes of Alaska appointees were not unanimous (98.6 percent of the votes). On 11 of the 14 occasions when the Alaska appointees voted together, the Secretary's representative, the Regional Director of the National Marine Fisheries Service for Alaska, also concurred. Thus, only three votes out of 905 (0.3 percent) were decided on by a six to five majority consisting solely of Council members recommended by the Governor of Alaska. In the case of the inshore/offshore recommendation, the final vote was a very nearly unanimous 10-1 decision.

A related issue pertains to the role of the Secretary. Presently, the Councils act in an advisory capacity. They may recommend fishery conservation and management measures, which in turn must be approved by the Secretary and adopted by regulation promulgated by NMFS. This advisory role is strengthened in that the Secretary, in most instances, must either accept, reject, or reject in part a Council's recommendation. In theory, this effectively provides the Councils with a more substantive role than they would have if they were simply an advisory body.

Certain segments of the commercial fishing industry, sports fishing interests, and the conservation community have called for changes to the Act to strengthen the hand of the Secretary and to reduce the powers of the Councils. One proposal would limit the role of the Councils to addressing allocation issues only, and leave the setting of allowable harvest levels to NMFS. Other proposals would have the Councils act in a simple advisory role, with all substantive decisions resting with the Secretary.

In the North Pacific this could result in a serious weakening of fishery conservation measures. For example, the NPFMC adopted a ban on roe stripping over the objections of the NMFS. The NPFMC has reduced harvest on depressed stocks of POP and other rockfish in the Gulf of Alaska to initiate rebuilding over the objection of the NMFS. The NPFMC has also maintained the 2 million ton cap on Bering Sea harvest despite efforts from some segments of industry and NMFS to raise the cap. If the ability of the NPFMC to implement these fishery conservation measures is curtailed, then it is likely that these efforts to conserve our nation's fishery resources will cease as well.

Recently the Secretary has overturned a number of carefully crafted conservation and management measures recommended by different Councils. In several cases, the Secretary has substituted his own management plan for that of the Council plan, often with little or no justification provided to explain the action taken. In many of these instances, the Secretary has acted contrary to section 304 by

substituting Secretarial amendments for Council recommendations without providing the Council an opportunity to correct or modify the plan to meet the national standards. In one particular case in the North Pacific, the Secretary overturned conservation measures to protect and rebuild depressed stocks of rockfish despite clear evidence of their depleted condition.

In order to reaffirm the Council's primary regulatory role, the Congress needs to provide stricter controls on the Secretary's ability to arbitrarily override a Council recommendation, and to require detailed findings on the part of the Secretary explaining the reasons for the decision. Section 304 could be amended to provide that Council proposals are automatically endorsed unless the Secretary is able to specify the reasons the Council recommendation is substantially at odds with the ecological, biological, social, or economic evidence reviewed by the Council, is arbitrary or capricious, or lacks a rational connection with the national standards. The Secretary should be prohibited from substituting his management plan for a Council recommendation unless such findings are made and the Council is provided an opportunity to address any deficiencies identified by the Secretary and fails to do so.

One additional area which obviously needs some attention is the relationship of fishery management measures adopted pursuant to the Act and other federal environmental statutes and regulations. For example, the statutory and regulatory requirements for timelines

and analyses under the Act and NEPA are not consistent, and sometimes cause serious bureaucratic delays. Congress should look to reconcile the requirements for analyses and schedules under the Act with other appropriate federal statutes to streamline the process and make it more consistent.

### Summary

#### 1. Strengthen the Conservation Standards in the Act

Congress should strengthen the hand of the Councils and give a clear signal to fishery managers regarding conservation of our nation's fishery resources. Because of the way NMFS is interpreting the Act and the national standards, bycatch and discards are treated more as a cost of doing business than as a form of waste. Conservation and management of our common property fisheries resources must address the broader issues of discards and waste, and embrace the concept of wise use.

The State of Alaska urges the Congress to:

- \* Strengthen the conservation provisions in the Act to address waste and conservation issues. The purposes and national standards of the MFCMA set the standard for fisheries management and utilization. Conservation of our fisheries resources should be the primary purpose of the Act, and there

should be a new national standard setting conservation as the first priority for fishery management plans.

- \* Adopt provisions in the Act setting the goal of eliminating "economic discards" to achieve full utilization harvested fishery resources, and require fishery management plans be modified to set out programs for reaching this goal in a specified timeframe.
- \* Adopt provisions in the Act to control, reduce, and minimize bycatch in our nation's fisheries, and include measures to give priority to the use of fishing gear, or fishing practices which result in the lowest bycatch for the given harvest of a particular target species.

2. Support the Nation's Coastal Communities and the Shoreside Economy

Fisheries play a significant role in the economy and way of life in many of the nation's coastal communities. In Alaska, fisheries are the lifeblood of many of our coastal towns and villages. It is important that we, as a nation, maintain and enhance these economic opportunities in our communities. The North Pacific Fishery Management Council's CDQ program offers a new and innovative approach to developing local, fisheries based economies.

The State of Alaska believes that the goal of achieving economic efficiency in the harvest of our fishery resources is important, but should be balanced along with the factors of full utilization and wise use of the resource, the need for balance among the various segments of the industry, the desirability of maintaining diversity in the fishery and the industry, and the economic and social needs of our coastal communities. The Act should be amended to require this balance, minimize preemption of one sector of the industry over another, and reinforce the national intent to protect and enhance the economies of our coastal fishing communities.

### 3. Strengthen the Council Process

In promulgating a comprehensive national fishery policy in 1976, the Congress had the wisdom to keep the day-to-day management of EEZ fisheries in the regions where the fisheries occur. The system of eight Fishery Management Councils puts decision-making where it belongs--where the decision-makers are accountable to the fishermen and communities affected.

Rigorous implementation of existing law regarding financial disclosure and Council appointments will address the issues raised regarding conflict of interest on the Councils. We urge you to reaffirm this system. In addition, Sec. 304 should be amended to restrict the Secretary's ability to arbitrarily override a Council recommendation without making

detailed findings that the recommendation is substantially at odds with the ecological, biological, social, or economic evidence reviewed by the Council; is arbitrary or capricious; or lacks a rational connection to the national standards. The Secretary should also be prohibited from substituting his management plan for a Council recommendation unless such findings are made, and the Council has been afforded an opportunity to address any deficiencies identified by the Secretary and has failed to do so.

The statutory and regulatory requirements of the MFCMA and other federal statutes and regulations need to be brought into consistency with each other. For example, the statutory and regulatory requirements for timelines and analyses under the MFCMA and NEPA are not consistent, and sometimes cause serious bureaucratic delays. The already painful process of making difficult management decisions is further compounded by an apparent lack of standard procedures on the part of NMFS for analysis of important issues. Congress should look to reconcile the requirements for analyses and schedules under the MFCMA with other appropriate federal statutes to streamline the process and make it more consistent. Procedures should be standardized, streamlined, and simplified as appropriate; and applied with consistency throughout the nation.



As a final comment, the State of Alaska has a firm commitment to the process of managing and conserving our nation's fisheries resources. We work through the Council process and with our counterparts in the federal management agencies to ensure that the process goes well and the resource managed properly. The importance of this partnership between the states, the Councils, and the federal agencies must not be overlooked in this time of declining revenues and tight budgets. This partnership should be strengthened both in the Magnuson Act and in our day to day working relationships.

Thank you for this opportunity to come before you today to discuss these important fishery management issues.

Testimony By

William S. "Corky" Perret  
Assistant Secretary, Office of Fisheries  
Louisiana Department of Wildlife and Fisheries

on

Reauthorization of the Magnuson Fishery  
Conservation and Management Act of 1976

Presented To

The Subcommittee on Fisheries Management  
Merchant Marine and Fisheries Committee

House of Representatives

June 16, 1993

Mr. Chairman, and members of the Fisheries Subcommittee, my name is William S. "Corky" Perret. I am an Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, and a voting member of the Gulf of Mexico Fishery Management Council. I sincerely appreciate the opportunity to appear before you and provide my input for your deliberations in reauthorization of the Magnuson Act.

This Act has been of utmost importance to cooperative management of the fishery resources of our region. I stress cooperative, because in our region, most of our fisheries resources are shallow water estuarine dependent species harvested by both recreational and commercial participants.

Fishery resources are not constrained by political boundaries; states and the federal government share jurisdiction over many of the same resources. Both the federal government and the states serve as trustees and stewards for the public utilization of these marine fishery resources, and what each does affects the other. The state and federal government must coordinate their activities and cooperate if management is to be effective in achieving mutual benefits for our fisheries and their users.

Despite the clear Congressional intent that fish stocks be managed as units throughout their range (National Standard 3), continuing problems impede achieving that goal. Certain fisheries concentrated within State jurisdiction require coordinated management, but are not subject to Magnuson Act jurisdiction, thus lack a firm legal basis for coordinated interjurisdictional

management. Section 306 should be amended to specifically establish and/or clarify the authority of the states in the absence of a Council F.M.P. to manage species harvested in the EEZ that occur in both the state territorial waters and the EEZ. The Gulf Council, Gulf states, and the Gulf States Marine Fisheries Commission have successfully worked together under shared jurisdictions since the inception of the various institutions in a partnership arrangement for management of marine resources. Recently, the authority of the partners has been affected by some divergent legal interpretations which cause confusion and less than effective management arrangements for some species. State rules have been challenged in federal court, with a lower court ruling invalidating one state's rule. An initial court of appeals brief returning it to the lower court suggested that all fish in the EEZ should be managed under the Magnuson Act. This would create a serious problem, if subsequently upheld by a higher court, and overtax the ability of the Council system to provide EEZ management for all species not managed under FMPs. With the states management authority clarified, actions by the states under a coordinated interstate FMP for a species would provide for effective management without the need for Federal Council's costly and time consuming management process.

One of the most serious problems faced by the Councils and state fishery administrative personnel is fundamental: our fisheries information base (biological, social and economic) is often insufficient to support sound management.

Under the Magnuson Act, the National Marine Fisheries Service (NMFS) is responsible for providing information to the Councils for proper management of the fisheries stocks. However, serious deficiencies exist in NMFS's collection and management of scientific data; this jeopardizes effective fisheries management.

National Standard 2 requires that conservation and management measures be based on the best scientific information available; however, the only scientific information available is often out-of-date and highly questionable.

Lack of sufficient data to adequately assess the stocks of many species, and access to data in a timely manner, hampers effective Council management. A clear example has been NMFS inability to adequately monitor harvest of species which operate under an annual quota system. Delays in data availability have routinely resulted in quotas being greatly exceeded.

The NMFS budget should be augmented to provide adequate funding for data collection, resource monitoring and administration. These data needs are becoming increasingly more pressing as more fisheries are being brought under management. Possible funding mechanisms could be the establishment of a trust fund using revenues generated from an excise tax on the landed value of all domestic, imported, and recreational fish and fish products, or from economic rent. Additionally, the Councils should be provided with discretionary funds to conduct outside independent research and/or monitoring studies as necessary.

Various methods of controlled access in fishery management are

currently being addressed by the Councils. These systems, if implemented, have special requirements, (i.e., onboard observers and monitoring systems, and good collection and management of data), if the programs are to be effective. However, current funding is severely limited for such programs; authority to collect fees is currently limited to administrative cost of permit issuing, with the funds collected deposited to the U. S. Treasury, and not available for managing the fishery from which the funds are derived. Section 304(d) should be changed. Fees collected for permits should be available for NMFS to support the permitting programs and other administrative functions.

Law enforcement is a vital component of fishery management and another area that needs improvement. Many believe that the federal agencies are unable to properly enforce fishery management regulations, and that increasing illegal activity is hurting both the resource and legitimate resource users.

Law enforcement is an area where the states have demonstrated expertise. In the Gulf, as an example, cooperative law enforcement agreements currently exist between NMFS and four of the five Gulf states; however, these agreements do not provide funding for state law enforcement personnel that are enforcing Magnuson Act regulations. If funds were made available to the states, additional "at sea" as well as "at the dock" enforcement could be provided, thus improving our law enforcement efforts and ensuring better compliance with these regulations.

Recently, a great deal of discussion has centered around

conflict of interest for members of the Fishery Management Councils. The Act requires that Council members, by reason of their occupational or other experience, be knowledgeable of the fisheries, and should exercise sound judgement as trustees of the nation's fishery resources. The intent is to avoid promotion of narrow interests in the deliberations of Council actions. The appearance of conflict is especially strong in the case of individuals who are representatives (at times officers) or employees of fishery organizations. Conflict of interest is a serious issue and must be addressed. Otherwise, there will be further erosion of public confidence in federal fisheries management. One approach would be to require that all voting members of a Council take an oath of office "promising to conserve and manage the living resources of the U. S. by carrying out Council duties and responsibilities for the greatest overall benefit for the Nation, without regard to personal benefit". This oath should include provisions, standards, and requirements of the Magnuson Act and other applicable law. Provisions should also be made for voting members to recuse themselves from Council action at appropriate times, if the potential for conflict exists. One approach to implementing these recommendations would be to amend Section 302(b), Voting Members.

Habitat is the key to maintaining our fisheries. The Gulf region has approximately 50% of the nation's coastal wetlands that are so important to our many estuarine dependent species and which are being altered at an alarming rate. Section 302(i), Fishery

Habitat Concerns, should be strengthened to allow Councils to provide more input on issues of habitat concerns.

The regulatory process must be streamlined. Efficient management of U.S. fisheries must seek to reduce the costs associated with regulatory delays. Federal fisheries management is currently hampered by the need to comply with redundant requirements of several other applicable laws in addition to the Magnuson Act. These include the National Environmental Policy Act, Coastal Zone Management Act, Paperwork Reduction Act, Endangered Species Act, Executive Order 12291, Regulatory Flexibility Act, and the Administrative Procedure Act. This complexity burdens and complicates the management process. Provisions should be made to exempt FMPs from separate analyses of these other acts.

Again, I sincerely thank you for the opportunity to provide input to your subcommittee on this issue that is so vital not only to our U. S. fisheries resources and their participants, but also vital to the overall well being of the Nation.



Answered Additional Questions of William "Corky" Perret, Director of Fisheries, Louisiana Department of Fisheries -- Magnuson Act Hearing before the Subcommittee on Fisheries Management, June 16, 1993

1. Should Community Development Quota programs be considered for economically depressed coastal communities throughout the United States?

While such programs should have significant benefits to affected fishermen and their communities, eligibility criteria would be difficult to determine and administer. Many fisheries are similarly depressed due to overcapitalization (i.e., too many vessels) and because of the impact of imports or prices paid fishermen for their domestic landings.

2. How should the Magnuson Act be revised to reduce waste and bycatch problems?

Strengthen sections on Findings, Purposes and Policy in the Act to discourage willful waste and promote bycatch reduction. However, language should not be so restrictive that major fisheries are required to be shut down or rendered economically extinct due to bycatch. Recognize that some bycatch can never be completely eliminated. Minimum sizes established for various stocks will always result in undersize fish being discarded since they are illegal to possess. Current gear technology does not exist to address many of the bycatch problems. Additional funding for this purpose would expedite solving of this problem.

3. Do you have any specific suggestions on implementing funding mechanisms that would be alternatives to federal fishing licenses?

Provide that existing and future fees be dedicated to fisheries management, i.e. returned specifically to the federal and state fishery agencies for use in fisheries management rather than revert to the general treasury.

4. How should we amend the Act to strengthen Habitat Protection?

Give Councils veto authority over projects that would significantly affect critical habitat identified in the FMP's. Such language if added to the Act, should place the burden of proof on the developer and Federal permitting agency, rather than the Councils.

5. Does the International Association of Fish and Wildlife Agencies agree that federal regulations do not take precedence over a State's if the State regulations are more restrictive or environmentally conservative?

This, as I understand it is the IAFWA position. However, I do not agree with this position entirely. I believe that if a federal FMP is in place, a state should be able to be more restrictive in their state waters, but that their more restrictive regulations do not apply to waters of the EEZ unless the appropriate Council approves such a measure.

6. Do the Management Councils adequately consider long term economic benefits in setting harvest caps and allocations?

Yes, to the extent that data are available. Frequently, the data bases for the appropriate economic analyses are inadequate. Supply and demand functions for such analyses for many fisheries are nonexistent, especially for the recreational component of the fisheries. Cost and return analyses are not available for vessels for most commercial fisheries and the charter boat sector. NMFS lacks adequate economic personnel and funding to provide these analyses.

7. Are the Management Councils doing a good job of minimizing waste and bycatch, or are they choosing not to exercise such authority?

The Gulf Council has addressed shrimp trawl bycatch on two occasions. First through a draft FMP on groundfish in 1980. This FMP proposed reducing bycatch by establishing gear restrictions, contingent upon successful development and testing of promising new gear. That draft FMP provided the following:

- A. A gear will be considered successful if the following three criteria are met:
  1. It reduces the fish/shrimp ratio by approximately 50 percent in direct comparison to standard trawls on commercial vessels.
  2. It does not reduce the shrimp catch by more than three percent in direct comparison to standard trawls on commercial vessels.
  3. It does not increase the overall cost of gear by more than ten percent.
- B. The council will determine when development and testing of a gear has been successful and will initiate restrictions governing the use of such gear by area by season.

This was not implemented because technology for such a trawl was not available. The Council did request that NMFS develop such a trawl. NMFS began development, but shifted it's emphasis to the development of TEDS, which at the time was a more pressing issue.

In July 1990, the Council moved to proceed with an amendment to the Shrimp FMP addressing bycatch reduction. Currently the shrimp industry, NMFS, states and universities are collecting information to characterize bycatch and to develop bycatch reduction devices (BRDS). Upon completion of these studies, the Gulf council will proceed with their amendment.

8. Should Native Americans be voting members of the Management Councils wherever they are treaty guaranteed fishing rights involved? Do they need special authority?

To my knowledge no such treaties exist in our Council's area of jurisdiction.

9. What additional authority do Federal and State fishery management agencies need to adequately protect critical fish habitat?

See #4 above.

10. If the Act is strengthened in the habitat protection area so that potential developers would have to consult with the Councils and/or NMFS, what staffing and funding changes would be needed to provide the necessary habitat protection and management expertise?

I feel that such a consultation process should be granted to NMFS.

11. How should we define overfishing in the Act?

The current CFR, Part 602 federal guidelines already adequately defines overfishing and requires each council to submit a definition for each fishery and a restoration program for overfished stocks. Due to the tremendous species diversity and variations in available stock assessment information nationally, a single definition of overfishing is not feasible.



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(Organized July 20, 1902)

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### TESTIMONY OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES ON REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

#### PRESENTED TO THE SUBCOMMITTEE ON FISHERIES MANAGEMENT U.S. HOUSE OF REPRESENTATIVES

Presented by

Dr. Rudolph A. Rosen

Director of Fisheries and Wildlife

Texas Parks and Wildlife Department

4200 Smith School Road, Austin, TX 78744

June 16, 1993

Mr. Chairman and members of the Committee, I am Dr. Rudolph A. Rosen, Director of Fisheries and Wildlife for the Texas Parks and Wildlife Department. Today I am representing the International Association of Fish and Wildlife Agencies (IAFWA), as well as the Texas Parks and Wildlife Department. I currently chair the IAFWA's Marine and Estuarine Committee, which helps guide the Association's policy on marine fishery management issues.

The Texas Parks and Wildlife Department is the state agency responsible for management and regulation of coastal fishery resources within the State's territorial seas which extend nine nautical miles from shore. We also work cooperatively within the Gulf of Mexico on fishery management through membership on the Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission.

The IAFWA, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

### INTRODUCTION

We are pleased to discuss reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This is important legislation to the states because states have primary management authority over fishery resources in state waters, which extend three nautical miles (nine nautical miles in Texas) from shore. States also play a vital role in management of fishery resources in federal waters, through voting membership on the Regional Fishery Management Councils and through participation on technical committees advisory to the Regional Councils.

We welcome review of the effectiveness of the Magnuson Act. The Magnuson Act has taken us forward from the days of intrusive foreign fishing. The domestic fishing industry has doubled and recreational marine fishing has exploded in importance and economic impact. The legislation has created a strong and regionally-responsive system to manage marine fisheries, but periodic intensive review and evaluation will help strengthen the Act and make adjustments for changing times, thus providing a process of continuous improvement.

From the states' perspective, the Magnuson Act has been a vital element in establishing regionally-responsive fishery management in both inshore and offshore waters. Prior to 1976, the states had jurisdiction over fisheries within their waters and over their own citizens beyond the boundaries of the state, but inconsistencies among states were widespread. This problem was exacerbated by a general absence of any fishery-specific regulations in waters beyond the boundaries of the territorial sea (save for management measures contained in plans developed by the interstate marine fishery commissions and implemented individually by the states).

The Magnuson Act addressed confusion, fragmentation, and biologically-irrelevant management by institutionalizing the principle of cooperative, regionally-responsive, and science-based management of fisheries within the U.S. Exclusive Economic Zone (EEZ). It created the requirement to manage marine fisheries and established standards (including attaining optimum yield, preventing overfishing, and using the best available scientific information), fostering the notion of professional management. The significance of the Magnuson Act in this regard is enormous.

The Magnuson Act correctly focused fishery management where it belongs--at the regional level with states and citizens working together with the federal government. In some cases, the Councils have delegated full authority to the states to manage stocks in the EEZ, subject to the national standards and any jointly-developed fishery management plans. This represents a landmark federal approach to resource management and setting of regulations. Over the past 17 years, the councils have functioned to bring together scientific experts, commercial fisherman, anglers, environmentalists, and others interested in marine fishery resources.

This accessibility and ready-made forum for discussion and involvement has served the nation well, but therein lie several problems. This openness and total involvement has resulted in a lengthy and arduous management process, but one that is essential in helping build consensus among constituencies.

In addition, because of the often conflicting demands on fishery managers, almost every major decision has winners and losers. This has led to polarization in many instances. Winners are generally happy with the process, losers are not.

For many, the "effectiveness" of the Magnuson Act is largely a matter of perspective. Those displeased with the Act and associated process would do well to remember "how it was" before the Magnuson Act, the Councils, and the processes now in place. We doubt anyone would choose to go back. This is a time for adjustment, not drastic change in the Magnuson Act.

The Magnuson Act is fundamentally sound and must be reauthorized. Furthermore, Regional Councils must be retained with essentially all of their current function and responsibilities, and the role of State marine resource management agencies on the regional councils must be retained in its current form. The Governor's role in the appointments process must remain. We disagree with any change which would implement a broad-scale "federal fishing license" but we are amenable to the creation of funding mechanisms which are specific to Fishery Management Plans approved by the applicable Regional Council. Fishery habitat protection should be strengthened, but any processes to do so should not further impede implementation of fishery management plans. Finally, Section 306 (State Jurisdiction) should be amended to specifically establish and/or clarify the authority of states, in the absence of a federal fishery

management plan, to manage species harvested in the EEZ that occur in both the EEZ and states' territorial waters. Also, this section should be amended to enable a state, with the concurrence of the appropriate council, to establish landing laws or regulations for species harvested in the EEZ, as well as state waters. Beyond this general overview, we offer detailed comments below.

Today's testimony focuses on six categories of general interest to the states in the reauthorization process. These areas are:

- Fees and Funding
- State vs. Federal Regulations
- Conservation, Allocation, and Full Utilization
- Interjurisdictional Fisheries--Atlantic Coast
- Habitat Conservation
- Administration

#### FEES AND FUNDING

There are several funding issues at stake in Magnuson Act reauthorization.

There is a need for Congress to recognize, through increased funding or alternative funding mechanisms, the simple fact that the Regional Council process and, in general, management of fisheries are expensive. Commercial and recreational marine fishing are conservatively worth billions of dollars to the U.S. economy, yet managers are hamstrung in efforts to fund adequate studies or mitigate economic hardships to participants in fisheries where drastic reductions in harvest are required to meet necessary conservation goals. The result has been less than adequate information on which to base decisions and an unwillingness by the Councils to impose severe hardship on fisherman, even when fishery stocks appear on the verge of collapse.

Fees are a viable solution. But, currently no mechanism exists for the Councils to address funding the costs of fishery management.

People who use a public resource should be expected to contribute to the cost of managing and conserving that resource. Recreational hunters and freshwater anglers have done so for the better part of the 20th century and commercial fisherman are usually licensed by state agencies to fish in state waters or land at state ports. Marine recreational anglers in many states are required

to buy licenses or special marine fish stamps for fishing in state coastal waters. It's appropriate for marine sport and commercial fisherman fishing in the Exclusive Economic Zone to accept greater responsibility for financing management programs for fisheries in the EEZ.

Society at large also benefits from properly managed marine resources by virtue of the seafood purchased and consumed by the non-fishing public. As Congress addresses management needs facing the nation under the Magnuson Act, it is appropriate that non-fishing seafood consumers be considered as users and beneficiaries of marine resources. Their involvement justifies continued Congressional funding of the costs of management, particularly the full funding of research and management programs necessary to ensure that fishery managers have the information and tools necessary to properly conserve and manage marine fishery resources. This support must continue, in addition to any fee or permit-based funding that comes from state licensing programs or funding strategies specifically authorized by fishery management plans.

However, fees associated with landings, vessel licensing, or other assessments on commercial or recreational fisherman should be the responsibility of state authorities working in concert with the Regional Councils to meet regional needs and under the auspices of approved fishery management plans.

We do not support broadly-mandated federal assessments or generalized federal licensing as a means of funding fishery management. Historically, this has been the prerogative of the states and any federal licensing system would be duplicative, competitive, and counter to the established benefits now accruing to resource management programs through the states.

We would be receptive to amendment of the Act to authorize fishery management plan-specific fees to be collected, to be dedicated to the plan provisions for which they are approved. For example, in the event a particular plan contains a specific and expensive management measure, that plan could require a specific fee to fully or partially support that measure. Fees collected in this regard must be regionally-approved and, by necessity, would have to be dedicated wholly to the purposes intended.

In the past decade, effort reduction programs (including measures to limit entry to overexploited

fisheries) have been utilized more frequently by fishery managers to address overcapitalization. These programs are expensive to manage and costly to those regulated by the plans, but it is believed that they provide long-term benefits to the resources, to the fishing public, and to society through increased harvest efficiency leading to lower prices and better products.

These programs generally require financing to be successful. For example, some effort reduction programs may require vessel buy-backs to be effective and to reduce hardships brought on by fleet reduction. Fisherman suffering inordinately because of such programs can be compensated or temporarily supported in some manner to get them past the hardship imposed by management. Such financing can deal effectively with the social, political, and economic realities of fishery conservation. Regardless of whether or not a means to ease hardships is implemented, fishery managers believe that management measures needed to recover depleted stocks and prevent other stocks from adverse impact will, in many instances cause displacement of harvesters and reduce the availability of some commercially important species. Individuals and firms may suffer, which can have a short-term detrimental impact on affected coastal communities.

Quite simply, fishermen resist conservation because of the immediate cost they bear during implementation. The short-term economic and social costs are part of the reason that progress in marine resource conservation is slow. If the economic burden could be minimized, fishermen would be more likely to support conservation measures, resistance to needed conservation measures would diminish, and fish stocks could be restored more quickly.

#### STATE VS. FEDERAL REGULATIONS

Prior to the Magnuson Act, the courts repeatedly affirmed states' rights beyond three miles. In explaining the proposed bill, Senator Magnuson assured his colleagues that such states "would be almost in complete control." It is time to reaffirm the legitimate role of the states in marine fisheries management. The Magnuson Act should clarify the intent of Congress regarding the extent to which states can conserve important fisheries where no federal management exists or where a state's regulations are more conservative than federal regulations.



Section 306 (State Jurisdiction) should be amended to specifically establish and/or clarify the authority of states, in the absence of a federal fishery management plan, to manage species harvested in the EEZ that occur in both the EEZ and states' territorial waters. This section should be amended to enable a state, with the concurrence of the appropriate council, to establish landing laws or regulations for species harvested in the EEZ, as well as state waters if a fishery management plan is in effect. Subject to the national standards and any existing fishery management plans, state regulatory authority should extend throughout the EEZ with respect to stocks only found and harvested off the shores of that state. Finally, this section should reflect that federal regulations do not take precedence over a state's if the state regulations are more biologically conservative.

#### CONSERVATION, ALLOCATION, AND FULL UTILIZATION

The Congress should more clearly express the primary intent of the Magnuson Act to conserve fisheries and restore depleted stocks of fish. A 1992 study of fishery stocks by the National Marine Fisheries Service concluded that 67 stocks are overutilized, 61 are fully utilized, that the status of 80 stocks is not known, and that only 28 stocks are underutilized.

Fishery managers know all too well the dilemma of overseeing a decreasing resource in the face of increasingly sophisticated gear and expanding numbers of resource users. Congress should reaffirm, as a national goal, the need to ensure the long-term health of our fish stocks and the fisheries that depend on those stocks. Conservation should be the primary purpose of our fishery management programs, and the Act should emphasize this purpose without suggesting that it is the sole purpose.

The Act should also require that Councils include a definition of "overfishing" in any fishery management plan, although not necessarily a strictly quantitative one because in some instances strict "quantification" of overfishing may be impossible. For stocks determined to be "overfished", fishery management plans should establish a rebuilding plan which defines specific measures and a timetable to achieve recovery.

The Regional Councils function as resource stewards, but they are required to weigh necessary conservation measures against the impact of those measures on society. This is a thankless task. No one is ever entirely satisfied with the outcome, but it does meet the

objective of being sensitive to the condition of the resource as well as to those affected by resource conservation programs. Ideally, biological resource conservation decisions should be made first, followed by decisions relating to utilization. In practice, we believe most Councils now engage in this type of two-step decision-making process and we believe the outcome of this process is best left to the discretion of regional councils, to be determined through their deliberative process.

In the past, when faced with difficult resource conservation decisions, some councils have deferred action or "extended the time frame" for rebuilding stocks. While some level of short-term economic hardship may have been delayed, the penalty often was excessive utilization and long-term uncertainty for those regulated. We believe Councils have come to a different way of thinking in the past few years using the "602 guidelines" as the guidance intended by Congress. It is important to continue to allow Councils the latitude to make these difficult decisions, as determined through regional deliberations and with public input. We do not believe it is necessary or appropriate to mandate, through legislation, the outcome of those regional deliberations.

#### Limited Entry

The Regional Councils must be free and encouraged to emphasize measures to limit participation in a fishery if they determine such measures are in the best interest of the resource and society. The Magnuson Act should institute the principle that commercial and recreational fisheries represent opportunities that must be regulated in balance with the biological health of the target resources and associated fisheries.

While limited entry currently is among tools available to the Regional Councils, it is not the only tool. It, and other techniques for controlling fishing, must be specific to the subject fishery and must be designed by the appropriate Regional Council. Any limited access program should address diversity in the fishery and the industry, and provide for the economic and social needs of coastal communities.

#### Bycatch

The nation has an overriding interest in seeing that public resources are properly utilized. This includes the maximum utilization of harvested fisheries resources,

including the recovery of processing wastes, the elimination of discard waste, and the reduction of unnecessary losses due to bycatch.

Economic discards are the targeted species that are harvested in a target fishery, but not processed because they are the wrong size, poor quality, or not "worth" keeping. This differs from bycatch, which is a term for unwanted fish or shellfish taken in a directed fishery that targets a different species.

While attention has been given in the Act to addressing bycatch, additional emphasis on reducing total waste seems warranted in conjunction with emphasis on fishery conservation. We encourage Congress to consider adopting provisions in the Magnuson Act setting the goal of reducing the waste of our fishery resources, both by more fully utilizing economic discards in ways that do not jeopardize the enforcement of conservation measures, and by minimizing the retention of bycatch species. The Councils should have clear authority to adopt measures to control and reduce waste, including management programs to give priority to the use of fishing gear, or fishing practices that result in the lowest bycatch for the given harvest of a particular target species.

#### INTERJURISDICTIONAL FISHERIES--ATLANTIC COAST

We believe that it is valid for Congress to take action on interjurisdictional fisheries management along the Atlantic Coast. However, we urge that this be done through legislative action completely separate from reauthorization of the Magnuson Act.

We are aware there are proposals to address Atlantic Coast interjurisdictional fisheries management, and that in the last Congress as well as in this Congress legislation has been proposed to accomplish this task. We encourage Congress to continue working on this separate track, but urge that this work continue to focus narrowly and specifically on Atlantic Coast fisheries only.

#### HABITAT CONSERVATION

While past amendments to the Magnuson Act have expanded the role of the Regional Councils in habitat conservation, these amendments provide little real federal authority for fishery managers to protect habitat necessary for production of a fishery under federal management. There continues to exist a "schizophrenic" federal approach to habitat protection, where one federal

agency may make decisions that allow degradation or loss of habitat necessary for the production of a fishery under management, even in the face of another federal agency's (National Marine Fisheries Service) fishery management plan approved by Secretarial action.

The Magnuson Act should give weight to delineation of habitat essential to production of a fishery within each fishery management plan. When actions are proposed that threaten designated habitat, the federal permitting or development agency should be required to consult with the National Marine Fisheries Service and the relevant Regional Council(s).

#### ADMINISTRATION

Recently, the Council system has come under increasing criticism. These criticisms range from concerns over the make-up of the individual Councils, to real or perceived conflicts of interest on the part of Council members, to the inability of some Councils to address important management and conservation issues in a rapid and regionally-responsive manner.

#### Gaining Efficiency of Administration

Fishery management through the Regional Council process is complex and lengthy due to extensive requirements for review, public involvement, and conformity with numerous other laws and regulations. Even simple actions require an arduous route to implementation, making the process unresponsive to changing needs and new information. For example, even with consensus among technical and constituent representatives, it may be impossible to make rapid adjustments to fishery regulations without resorting to "emergency rulemaking".

We support changes to the Magnuson Act that would help make the fishery management process and administration of the Magnuson Act more responsive to the biological requirements of fishery management and industry needs.

One way to do this would be to decentralize the decision making process, placing greater emphasis on actions by the regional offices and Regional Director of the National Marine Fisheries Service. Another way to achieve some measure of efficiency would be to orient fishery management plans toward broad statements of regulatory policy and develop goals and objectives for

management. This would provide a framework for more responsive adjustment in the details of regulations and specific management actions. The Regional Councils should be provided greater authority to rely more heavily on simple rulemaking processes as opposed the current requirements to go through arduous amendments to the basic Fishery Management Plan (or request emergency rulemaking). Rulemaking should be consistent with the framework of the plan, but address the needs of a changing fishery.

Another provision that would help in reducing administrative burden would be to allow swifter sunset of confidential information. Requirements to maintain this information, which realistically is of little value after a relatively short period, are cumbersome and place unnecessary requirements on management agencies and the Regional Councils.

#### Council Membership

One of the most serious complaints about the Councils is the quality of representation and perceived conflicts of interest on the part of individual Council members. Presently, the Act calls for the participation of persons who are knowledgeable and experienced in fisheries managed by the Councils. This will, almost by definition, result in some perceived level of conflict of interest. However, the expertise which is brought to the fishery management system by such individuals is an important and critical component of fishery management.

It is important to remember that Congress has addressed this matter in a number of amendments to Section 302 by strengthening the financial disclosure provisions of the Act and requiring the Secretary to ensure a fair and balanced apportionment of interests when making Council appointments. However, implementation has been a matter of concern by many. The performance of the Councils is determined by the quality of the individuals involved. Appointees to the Councils carry a very important responsibility, and should be of the highest caliber and capable of rendering reasoned and objective decisions. The Secretary has the authority to reject recommended appointees, and implement a screening process to judge the suitability of candidates. It is ultimately the responsibility of the Secretary to ensure that the Council appointees are qualified for the job and that there is balanced representation. Provisions already in the Act provide the means to help address the conflict of interest issue, these provisions must be used more effectively.

Role of the Secretary

A related issue pertains to the role of the Secretary. Presently, the Councils act in an advisory capacity. They may recommend fishery conservation and management measures, which in turn must be approved by the Secretary and adopted by regulation promulgated by the National Marine Fisheries Service. This advisory role is strengthened in that the Secretary, in most instances, must either accept, reject, or reject in part, a Council's recommendation.

In theory, this provides the Councils with a more substantive role than they would have if they were simply an advisory body. Recently, however, the Secretary has overturned a number of carefully crafted conservation and management measures recommended by different Councils. In several cases, the Secretary has substituted his own management plan for that of the Council plan, often with little or no justification provided to explain the action taken. In others, the Secretary has substituted Secretarial amendments for Council recommendations without providing the Council an opportunity to correct or modify the plan or seek additional public input.

In order to reaffirm the Council's primary regulatory role, the Congress needs to provide stricter controls on the Secretary's ability to unilaterally override a Council recommendation. At a minimum, the Secretary should be required to provide the Council detailed findings explaining the reasons for the decision. Section 304 should be amended to provide that Council proposals are automatically endorsed unless the Secretary is able to specify the reasons the Council recommendation is: 1) substantially at odds with the ecological, biological, social, or economic evidence reviewed by the Council; 2) is arbitrary or capricious; or 3) lacks a rational connection with the national standards. The Secretary should be prohibited from substituting his management plan for a Council recommendation unless such findings are made and the Council is provided an opportunity to address any deficiencies identified by the Secretary and subsequently fails to do so.

\* \* \*

We appreciate the opportunity to testify and would be pleased to answer any questions.



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(Organized July 20, 1902)

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July 30, 1993

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**Dear Ms. Rosa:**

We have attached to this letter answers to several of the questions that Chairman Manton asked that we respond to in his letter of July-1, 1993 to Dr. Rudy Rosen, of the Texas Parks and Wildlife Department. If Chairman Manton, or any member of the Subcommittee on Fisheries Management, have any further questions, please do not hesitate to contact this office.

Sincerely,

**Mark J. Reeff**

**Resource Director**

**cc: Dr. Rudy Rosen**

**Mr. Jerry Presley**

Should Native Americans be voting members of the management councils wherever there are treaty guaranteed fishing rights involved? Do they need specific authority?

To the extent the Secretary chooses to appoint representatives of interested tribes as voting members of management councils pursuant to 16 U.S.C. Sec. 1852 (b)(2)(A), where reserved tribal fishing rights are affected, there can be no objection in principle. No new authority is necessary for the Secretary to make such appointments. However, the Secretary's discretion should not be limited by requiring the making of such appointments.

Tribes should not be represented on management councils as a matter of right as are states, territories and the Commonwealth of Puerto Rico, because, unlike these governments, tribes do not have authority to regulate the fisheries in question. Treaties with Indian tribes reserve the right to hunt and fish within reservations and often on off-reservation areas as well. Where the tribal right to use of the resource is exclusive, tribal authority to regulate is deemed to be incidental to the right of exclusive use. However, where the right to the resources is not exclusive, no tribal right to regulate exists (see *South Dakota v. Bourland*). That is the situation here. Any reserved tribal right would be a federal right and, to the extent such reserved treaty rights are impaired by state or federal governmental actions, tribes may resort to federal courts for vindication thereof. However, the non-exclusive reserved tribal right does not constitute authority to regulate others.

Does IAFWA agree that federal regulations [under the Magnuson Act] do not take precedence over a State's if the State regulations are more restrictive or environmentally conservative?

1. Except as provided for in section 306(b) of the Magnuson Act, 16 U.S.C. §1856(b), no federal regulation under the Magnuson Act, whether more liberal or more restrictive than state law, can take precedence over state fishery regulation within state waters.

2. If the Secretary properly invokes the exception in section 306(b) and pursuant thereto assumes responsibility for the regulation of a fishery, federal regulation under the Magnuson Act takes precedence over state fishery regulation within state waters (other than internal waters of the state) regardless of whether federal regulation is more liberal or more restrictive than state regulation.

3. With respect to federal regulations, issued pursuant to 16 U.S.C. §1855 to implement fishery conservation plans outside state waters, such federal regulation takes precedence over state regulation in the FCZ except that more restrictive fishery regulations may be applied by the state to vessels registered under the law of such state. 16 U.S.C. §1856(a). And see *Anderson Seafoods, Inc. v. Graham*, 529 F. Supp. 512 (N.D. Fla. 1982).



# STATE OF ALASKA

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July 29, 1993

The Honorable Thomas Manton  
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House of Representatives  
Committee on Merchant Marine and Fisheries  
Room 1334, Longworth House Office Building  
Washington, DC 20515-6230

Dear Congressman Manton:

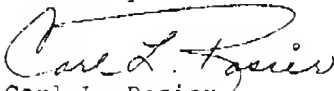
I want to thank you for providing the State of Alaska the opportunity to testify last month before the Subcommittee on Fisheries Management regarding reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA). I am also particularly pleased that you afforded us this opportunity to answer additional questions on specific reauthorization issues. I sincerely appreciate the effort you and the other members are making to understand and address the many complicated, and often contentious, issues facing the nation's fishery management system.

As I stated in our testimony before the Subcommittee, we believe that overall the management system established pursuant to the MFCMA is a good one. We believe that the council system is working and, in particular, we feel that the North Pacific Fishery Management Council is doing a very good job of managing the resources of the North Pacific.

Of course, improvements can be made to the system, and your questions capture the areas where legislative guidance can make a real and meaningful contribution. My responses to your questions are enclosed. If I or my staff can assist you in any way or provide you additional information, please feel free to contact me.

Once again, thank you for your interest in these matters and your kind consideration of Alaska's views on the MFCMA.

Sincerely



Carl L. Rosier  
Commissioner

Enclosure

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 7
To THOMAS MANTON	From C. ROSIER	
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**RESPONSE TO CHAIRMAN MANTON'S  
QUESTIONS FOR COMMISSIONER ROSIER  
REGARDING THE REAUTHORIZATION OF THE MAGNUSON ACT**

**What do you think about Community Development Quotas? Should they be extended to other fisheries?**

The Western Alaska Community Development Quota (CDQ) program is a recent innovative program initiated by the North Pacific Fishery Management Council to enhance local fisheries economies in rural Alaska. This is a joint program between the State, the NPFMC, and the Secretary which set aside relatively modest amounts of quota (7.5 percent of the Bering Sea pollock quota) to promote fishery based economic development in economically depressed communities in rural western Alaska. Over 50 Bering Sea communities, most with a mixed economy based largely on subsistence, are participating in the program.

It is important to remember that the actual quota is not awarded to the communities, but instead to applicant groups or organizations from qualifying communities. Community eligibility criteria are contained in federal regulation at 50 CFR Part 675. To date, six CDQ corporations have formed representing all of the eligible Bering Sea communities. These corporations, which are composed of fishermen from eligible communities, have entered into joint venture partnerships with major U.S. seafood companies and have successfully harvested their 1992 pollock allocation of roughly 100,000 mt., and the first half of their 1993 allocation. This has resulted in a significant increase in direct local employment, in the creation of several fisheries training and educational programs for local residents, and in capitalizing numerous fisheries development projects in the region. Under the present plan, the pollock program will last through 1995.

We believe that the CDQ program has made an auspicious beginning. However, the process of developing a stable economy in these small, remote communities scattered across thousands of miles of coastline is facing enormous challenges. Five years is not sufficient in our view to get this job done. We hope that, if we can make substantial progress in this time period, and if additional effort warrants continuing the program, we can extend the CDQ program for the period of time it takes to get the job done. It is our goal to ensure that this effort is successful, and that it will enable these communities to eventually participate in these fisheries without this program. That is why the State insisted that one of the criteria for judging CDQ applications be that the applicant have a plan for developing self-sufficiency in the fishery.

The CDQ program currently applies only to the Bering Sea pollock fishery. If the Bering Sea halibut/sablefish IFQ program goes into effect, then a CDQ program will also be implemented as part of the IFQ program for those species. If there are efforts to award permanent rights to other species in the Bering Sea, either through additional IFQ programs or other means, then we believe that a CDQ

program should be considered during that allocation process. However, we are presently focusing more on ensuring that the current program is a success rather than expanding the CDQ program to other species.

**Was the Community Development Quota program in Western Alaska awarded to the participating communities because they are Native American villages or because they are economically depressed?**

The Western Alaska Community Development Quota Program was established to assist certain communities in the Bering Sea region because they are some of the most economically depressed communities in the nation, not because they are Native villages. Economic status was the single most important criteria used to determine community eligibility. In fact some communities in the region, which qualify as Native villages, were excluded because they already have a significant groundfish seafood industry established. Other criteria are identified in federal regulations at 50 CFR Part 675.

The communities involved in this program have some of the highest rates of unemployment in the country, some of the lowest average per-capita incomes in the country, and some of the highest costs of living in the country. These communities are immediately adjacent to one of the nation's largest fisheries, and have benefited least from that fishery. The CDQ program holds the first true opportunity for many of these communities to develop a stable, long-term economy. By successfully implementing the CDQ program we hope to reduce dependence on government transfer payments and services in these communities, and provide a solid benefit to the nation by promoting new economic growth and reducing the drain on both the State and federal treasuries.

**You have stated that the Management Councils often are more conservation minded than the Federal managers and that some elements within the National Marine Fisheries Service are advising the fishing industry to raise the cap on Bering Sea harvests beyond the Management Councils cap. Could you elaborate on this observation?**

We believe that the overall record of the NPFMC is one of strong support for fishery conservation. Often times, the Council has taken action on the side of conservation in the face of opposition from either industry and/or NMFS.

For example, it was the North Pacific Fishery Management Council which led the fight to prohibit roe stripping despite objections from NMFS. It is the NPFMC which is trying, despite resistance from NMFS, to implement a rebuilding program for depressed stocks of Pacific Ocean Perch and other rockfish. And, perhaps most importantly, it is the NPFMC which, out of concern for the long-term health of the resource, has maintained the 2 million ton cap on the harvest of Bering Sea groundfish.

The Council has remained steadfast on this issue despite repeated attempts by some segments of the fishing industry, supported by advice from some elements within NMFS, to raise the cap beyond this level.

The Bering Sea and Aleutian Islands (BSAI) Groundfish Plan was implemented on January 1, 1982, and Amendment 1 established the 2.0 million metric ton Optimum Yield (OY) cap in 1984.

The first attempt to raise the OY cap came at the request of the Japan Fisheries Association in 1985, which proposed an increase to 2.5 million mt. After public review and analysis the NPFMC voted 8-3 to maintain the 2 million mt cap as status quo, with the Regional Director of NMFS voting against the motion even though NMFS scientists indicated at the time that they did not foresee equilibrium yield going up to 2.5 million mt.

In 1987, the Mid-Water Trawlers Co-operative submitted a proposal to raise the OY to 2.4 million mt. The Scientific and Statistical Committee (SSC), and in particular the NMFS scientists on the SSC, supported either increasing the OY to 2.4 million mt or creating a framework for setting OY equal to the sum of the Allowable Biological Catches (ABCs).

In May of that year, the Council voted 6-5 to maintain status quo, again with the Regional Director of NMFS voting to raise the cap. At this time those council members who voted to maintain the status quo cited concerns about the possible impact of pollock removals from the expanding donut hole fishery.

In 1988 and 1989 attempts were again made to raise the OY cap, each of which failed. By this time concerns regarding overcapitalization in the U.S. fleet, and the possible conservation problems which might ensue because of excess fishing, joined the concerns about the impact of the unregulated donut hole fishery. Americanization had truly taken hold, and some members on the council recognized the potential for overcapitalization in the fishery, and the attendant problems which would arise. In addition, substantially more information was becoming available regarding the donut hole fishery, which also heightened concerns over the long term health of the resource.

The decisions to maintain the 2 million ton cap have obviously been upheld by subsequent events. The donut hole fishery expanded from roughly 336,000 mt in 1985 to over 1.4 million in 1989 and then collapsed. During this same period the biomass in the Bogoslof management area (adjacent to the donut hole) collapsed from a 1989 value of 2.4 million mt to roughly 600,000 mt. When confronted with the dramatic overfishing in the Bering Sea donut hole by foreign fleets, the NPFMC closed the Bogoslof pollock fishery inside our 200-mile zone, moved to prohibit U.S. vessels from fishing in the donut hole, and called for a moratorium on all fishing in the Central Bering Sea to protect the stocks. If it had not been for the action of the NPFMC to maintain the 2 million ton

cap Bering Sea stocks would be in poor shape today, and the damage done by the donut fisheries would have had even greater effects on fisheries in the U.S. zone.

**How should the Magnuson Act be revised to reduce waste and bycatch problems?**

The State, and the North Pacific Fishery Management Council, have often been frustrated by Secretarial interpretations of the Act which emphasize short term harvest efficiency and economic return over long range conservation goals. Economic discards and bycatch are treated more as a cost of doing business than as a form of waste. By focusing on short term economic efficiency the Secretary has made it difficult for regional councils to effectively address the problems of discard waste and bycatch.

During the next reauthorization of the Act, Congress can provide the leadership to address this problem by strengthening the conservation provisions in the Act, and providing a priority for use of the "cleanest" gear and fishing practices which are available for harvesting a particular fishery resource. In addition, the Act should be amended to discourage economic discards and provide the NMFS and the Councils the necessary legal and technical tools to design a comprehensive approach to bycatch management.

We would suggest the following.

1. Strengthen the conservation provisions in the Act to address waste and conservation issues. The purposes and national standards of the MFCMA set the standard for fisheries management and utilization. Conservation of our fisheries resources should be the primary purpose of the Act, and there should be a new national standard setting conservation as the first priority for fishery management plans.
2. Adopt provisions in the Act setting the goal of eliminating "economic discards" to achieve full utilization harvested fishery resources. Require fishery management plans to be modified to set out programs for reaching this goal in a specified timeframe.
3. Adopt provisions in the Act to control, reduce, and minimize bycatch in our nation's fisheries. Include measures to give priority to the use of fishing gear, or fishing practices which result in the lowest bycatch for the given harvest of a particular target species. Provide specific authority to the councils and NMFS to implement a individual vessel incentive program to reduce bycatch.

**Should federal regulations take precedence over a State's if the state regulations are more restrictive or environmentally conservative?**

No. In state waters, a state's rules should apply in all circumstances. In the absence of state rules, federal fishery permit holders should be bound by rules implementing the fishery management plan.

However, uncertainty exists regarding the relationship between state and federal regulations in the EEZ under certain circumstances. We feel strongly that Section 306 (state jurisdiction) should be amended to specifically establish and/or clarify the authority of states, in the absence of a federal fishery management plan. This section should also be amended to enable a state, with the concurrence of the appropriate council, to establish landing laws or regulations for species harvested in the EEZ as well as state waters if an FMP is in effect. This section should reflect that federal regulations do not take precedence over a state's if the state regulations are more biologically conservative.

**Do the Management Councils adequately consider long-term economic benefits in setting harvest caps and allocations?**

Generally yes. However, one problem we have encountered is the narrow focus NMFS has employed in the social and economic analysis required under federal regulations and Executive Orders. NMFS has routinely relied on a narrow definition of economic benefit, focusing on short term economic efficiency at the corporate level, rather than on long term benefits which might accrue from other management alternatives. This has often confounded efforts to implement measures to address bycatch and waste, or to consider impacts to coastal communities or small vessel fleets when compared to larger operations.

**What additional authority do federal and state fishery management agencies need to adequately protect critical fish habitat?**

Most states have adequate authority to conserve, protect, and restore critical fish habitat. Providing the National Marine Fisheries Service with a stronger authority to reject or condition permits for projects which will result in unacceptable environmental impacts in the EEZ is the best way of strengthening the federal position with respect to fishery-specific habitat.

**If the Act is strengthened in the habitat protection area so that potential developers would have to consult with the Councils and/or NMFS, what staffing and funding changes would be needed to provide the necessary habitat protection and management expertise?**

We believe that it would be a mistake to include the councils directly in the review and approval of permits for individual projects or activities affecting fish habitat. The council process

is already complicated enough, and adding this additional burden would overload the system such that the councils would not be able to do their primary job, managing the fisheries under their jurisdiction. If the role and authority of NMFS were to be strengthened, then additional funding and staff would be necessary, but we would have to look at the level of additional work before making an estimate regarding the need for additional funds and personnel.

TESTIMONY OF ROBERT TURNER TO THE SUBCOMMITTEE FOR  
FISHERIES, COMMITTEE ON MERCHANT MARINE AND FISHERIES

June 16, 1993

Good Afternoon. I am Robert Turner, Director of the Washington State Department of Fisheries. Thank you for the opportunity to provide you with my views on fisheries management under the Magnuson Fishery Conservation and Management Act (MFCMA). I would like to focus on several issues which I believe should be addressed during reauthorization of the Act.

I strongly endorse the regional management concept implemented by the Magnuson Act. I serve on the Pacific Council and my designee serves on the North Pacific Council. These councils have managed the resources entrusted to them in a way which has, I believe, prevented overfishing, promoted economically viable fisheries, and provided quality seafood products to consumers.

The primary reason these two Councils are able to succeed is the availability of good science. The Pacific and North Pacific Councils have followed the advice of their scientists and that advice has served them well. Their record can only continue if Congress provides funding adequate to allow the councils to fulfill their statutory obligations under the MFCMA.



But, as with many good things, there are some warts. We can fix these warts during reauthorization.

### State Authority

The Pacific and North Pacific Fishery Management Councils and participating states have worked well together under the Act. We share jurisdiction in a partnership for management of marine resources.

Where Congress has not provided the councils sufficient funding to implement a Fishery Management Plan (FMP) for a particular species, the West Coast states, through the Pacific States Marine Fisheries Commission, have coordinated management of that species.

Lately, divergent legal interpretations of the Act have questioned the authority of the states to manage and protect resources in the Exclusive Economic Zone (EEZ) in the absence of a Fisheries Management Plan. My agency has recently experienced difficulty in controlling the harvest of several species because of this type of jurisdictional uncertainty.

Since Congress has not provided the Councils funding to manage all marine species, Section 306 should be amended to specifically establish and clarify the authority of the states to manage species harvested in the EEZ in the absence of a FMP. This section

should also clearly enable a state, with concurrence of the appropriate Council, to establish landing laws or regulations for species landed from the EEZ as well as state waters.

#### Council Composition

I ask you to add a seat to the Pacific Fishery Management Council to be appointed by the Secretary of the Interior to represent Indians with treaty-reserved fishing rights. Treaty tribes have reserved management responsibility and should be guaranteed Council representation.

By recent tradition, treaty Indian representation on the Pacific Council has occurred only because the Governor of the State of Washington has nominated only Indians to the at-large position. It is inappropriate and inconsistent with our government-to-government relationship with tribal governments that their representation be dependent upon the discretion of Washington's governor. It should be provided in law. The governor should not be put in the position of selecting which tribal government representative should be on the Council and, therefore, that the choice should rest with the Secretary of the Interior.

The North Pacific Council is currently comprised of 11 voting members, 7 (including the Regional Director, National Marine Fisheries Service) from Alaska, 3 from Washington and 1 from Oregon. The Council is unbalanced. Since Washington fishers take 60 percent of the catch, the addition of 2 Washington seats would help balance the Council.

I do not want to be put among those who use the "voting issue" to cover many other ills. A change in Council composition is not a substitute for good and proper administration of the Act itself. Prompt and decisive oversight action by the Secretary of Commerce directed at compliance with the intent of the Act would go a long way toward changing the perception of inequity.

#### Habitat Protection

Protection of essential habitat is a vital component of fisheries management. I support the Pacific Council recommendation to strengthen habitat protection by requiring Councils to describe essential habitat in fishery management plans and requiring project proponents to consult with the National Marine Fisheries Service on the projects impact on species managed by plans. Recipients of federal funds must conduct activities in a manner consistent with the Magnuson Act.

#### Regulatory process

Regulatory amendments are often given lower priority than FMP amendments because of the statutory time limitations on FMP amendments. Implementation of simple and uncontentious, but important fishery regulations are inappropriately delayed. I concur with the PFMC and many industry representatives that a time limit consistent with current statutory limit on plans and plan amendments be established. I also endorse extension of emergency regulations from 90 to 180 days plus an extension of up to 180

days. The extension should be granted based on public comment and evidence that the Council is preparing and plan amendment to resolve the problem.

### Fees

During the 16 years since the Act was implemented there have been awesome changes in fisheries, status of resources, and regulatory regimes. Innovative management strategies to rationalize fisheries management are on the horizon. The prohibition on charging fees should be amended so that these innovations can more easily be pursued. Examples of such include observer programs and other data collection programs, and limited access systems.

Finally, the issues of diversity of council member expertise and conflict of interests must be resolved. I believe these are best addressed by policies, rather than statute, which are precisely stated and scrupulously enforced.

I hope that these comments will be helpful in strengthening fisheries management under the Magnuson Act. Thank you for providing me an opportunity to testify today.

STATEMENT  
OF  
GORDON C. COLVIN

DIRECTOR OF MARINE RESOURCES  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BEFORE

THE HOUSE SUBCOMMITTEE

ON

FISHERIES MANAGEMENT

ON REAUTHORIZATION OF THE

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

JUNE 16, 1993

Good morning Mr. Chairman and the Members of the Subcommittee. On behalf of Commissioner Thomas C. Jorling, I want to thank the Subcommittee for inviting the New York State Department of Environmental Conservation to testify on reauthorization of the Magnuson Fishery Conservation and Management Act (the Magnuson Act).

The Magnuson Act is the cornerstone of the nation's marine fisheries management program. In the 17 years since its enactment, it has assured that the nation's offshore fisheries are professionally managed on the basis of scientific information, with decisions made on a regional basis reflecting the input and judgement of the user community as well as scientists and managers. The institutionalization of this approach to marine fisheries management has substantially improved not only the management of fisheries in federal waters, but also management by states and interstate compacts of all the nation's marine and anadromous fisheries. While the transition from unmanaged marine fisheries to professionally-managed fisheries with a scientific and regional focus has been slow and has not prevented overfishing of a number of important stocks, the process is now maturing and the benefits of such management are growing. Reauthorization of the Magnuson Act will assure the continuation of this important process and the continued improvement of our marine fisheries for the greatest benefit to the nation.

Your invitation requested us to address problems we have experienced with implementation of the Magnuson Act. This

testimony will include comments on certain issues that have been raised by others in the reauthorization discussions to date. The oral testimony will highlight those issues which are of particular concern to New York and other states.

- o Appointments Process - The Magnuson Act appropriately includes state fishery management officials as members of Regional Fishery Management Councils, and authorizes governors to nominate members of the Councils. This recognition of the key role that states must have in partnership with the federal government in managing regional fisheries has been fundamental to the success of the Fishery Management Councils. Failure to retain state fishery management directors as council members and/or changes in the roles of the governors in the appointment process would materially affect the states' willingness and ability to participate in the council process and in the federal fishery management program.

We should also point out, Mr. Chairman, that the procedures of the Department of Commerce in the appointment process have caused some considerable difficulty for governors in effectively completing the appointment process. The Commerce Department policies require all nominated council members to undergo exhaustive application procedures, including FBI background checks, fingerprinting, and filing of lengthy statements of personal philosophy all at the

time of initial nomination. These requirements are well known in the fisheries community and have, frankly, become a deterrent to individuals' willingness to be nominated, particularly in those circumstances where they are competing for at large seats and the likelihood of appointment is small. Some persons have suggested that governors be required to nominate a higher number of people. From personal experience in soliciting nominees, I advise you that this is not possible given the current procedure. Moreover, so long as Congress maintains its appropriate insistence that governors' nominees be both knowledgeable and experienced in fisheries matters, it is not necessary to require governors to nominate more than three individuals per seat. I would also urge the Subcommittee to look into the Department of Commerce's procedures, and to consider instructing Commerce to revise such procedures in the event you find that they are an actual deterrent to the nomination of qualified and interested persons.

- o Cooperative Law Enforcement - In prior amendments to the Magnuson Act, Congress provided that, where states have cooperative law enforcement agreements with the National Marine Fisheries Service, they may share in the proceeds of any penalty recoveries made in enforcement actions pursuant to such agreements. This



amendment was a helpful step toward revitalizing state/federal cooperation in marine fishery law enforcement. However, an additional amendment might help the process move along faster.

Specifically, we recommend that Section 311 be amended to provide that such recoveries be made available to states for Magnuson Act-related law enforcement activities including salaries, benefits, equipment and supplies.

- o Habitat Conservation - It has been suggested that fishery management plans be required to identify critical habitat areas and impacts for the fisheries included in the plan. It has been further suggested that where federal agencies propose to conduct or approve actions which are counter to such provisions of management plans, a consultative process analogous to that provided in the Endangered Species Act be established.

Protection of essential habitat in marine fisheries is critical to attaining the goals of the Magnuson Act. New York supports a secretarial consultation program where fishery management plans have identified critical habitat areas or issues. However, we further recommend that the identification of such areas in a fishery management plan under the Magnuson Act be optional rather than mandatory. For

some fisheries, the current database may not permit a clear, unequivocal identification of critical habitat areas and needs, and we would not want the absence of such information to serve as the basis of a legal challenge to a necessary fishery regulatory program or worse, for such absence to serve as the basis for secretarial disapproval of the management plan.

- o Regulations in State Waters - While New York has not experienced this problem, we are aware that some states have encountered difficulties retaining more restrictive state regulations for fisheries which occur in both state waters and the adjacent EEZ, and where they are under federal management. We recommend that the Act be amended to make it clear that more restrictive state regulations will be recognized where they occur in state waters adjacent to an EEZ fishery for which a management plan exists under the Magnuson Act.
- o Prevention of Overfishing - A number of advocates of fishery conservation issues are recommending the incorporation of a specific definition of overfishing in the Magnuson Act and clear requirements that management plans specify quantifiable overfishing definitions and management measures which will assure that fisheries meet such quantified definitions within a defined time frame. These views would be consistent

with assuring that the major provisions of 50 CFR Part 602 be incorporated in the Magnuson Act. This viewpoint can be contrasted with the comment from some others, noted below, that these regulations are inflexible and overly restrictive.

New York State has no objection to incorporating a clear definition of overfishing in the Magnuson Act and requiring Councils to demonstrate how proposed management measures will prevent overfishing and/or reduce fishing to a non-overfished condition in a clearly identified time frame. As noted below, however, we are of the opinion that the current federal regulations are adequate for this purpose and deserve to be given more time to complete the job for which they were intended. An expression of Congressional support for the provisions of these regulations would be most helpful to the Councils and their state members as they seek to deal with the problems of overfished fisheries that require significant reduction in fishing mortality in the immediate future.

- o Fishery Management Councils - Some environmental groups criticize the Council management system for not adequately protecting commercially valuable species. Other groups, mostly from industry, complain that the Councils are too conservative in managing fishery resources and that the Councils have become remote and

unresponsible. Some environmental groups have argued that the Council system should be abandoned in favor of direct regulation of each fishery by the federal government; some industry groups have argued for retaining the Council system but relaxing the minimum regulatory standards they must follow (see following discussion on FMP Content Requirements) and mandating balanced representation (see following discussion on representation on Fishery Management Councils).

New York State strongly supports retention of the Council system. Changing the system to allow direct regulation by federal agencies would deny the states an effective voice in these issues which are critical to them. Moreover, the opportunity for the fishing industry to have a say in decisions which may affect their livelihoods would be diminished considerably absent the Council system. The Magnuson Act will not work effectively if the roles of states and/or the industry are reduced.

- o Reducing Harvesting Capacity in Overcapitalized Fisheries - Some groups argue for restricting commercial access to overcapitalized fisheries through an individual transferable quota system or other arrangement which reduces fishing effort. The appropriate way to reduce the effort and to assign fishing privileges will depend upon the fishery in

question and the circumstances of the various states and interests that will be affected. New York supports allowing Councils to use any type of measure available to reduce fishing effort, but we firmly oppose amendments that mandate use of specific measures (such as individual transferable quotas) in specific circumstances. These decisions must be worked out through the Council system, evaluated during implementation, and refined over time.

- o Bycatch Issues - Most of the fisheries common in the Mid-Atlantic region are not affected by the shrimp bycatch issue. New York does believe, however, that the current prohibition against adoption of regulations to control bycatch should be lifted and the Councils should be authorized to address these issues as appropriate to their region.
- o Funding/Fees - Current funding levels to support preparation and monitoring to FMP's is inadequate. There has been some discussion of enacting excise taxes or user fees and directing all proceeds to support these and other program activities. New York supports the concept of dedicated user fees so long as the fees do not duplicate existing state fees or have the effect or precluding future action by states to generate fees. We oppose federal licensing or a federally-imposed landing fee (based on the dockside value of the take)

because these measures would preempt the states' efforts to levy against the same users. Although New York does not require recreational fishing licenses, commercial or levy landing fees, these are potential sources of revenue to support our state program and we do not want to concede them to the federal government. Other states do impose such fees and would probably object to them being levied at the federal level.

- o FMP Content Requirements - There have been complaints from the Councils and industry that regulations under Section 602 of the Act, which set forth the minimum content requirements for FMPs, are too strict and inflexible. For example, the regulations currently require that the FMPs use biological and numerical criteria to define overfishing of the species which is the subject of the plan. The critics contend that for some species, lobster for example, it is nearly impossible to set a specific number and state with certainty that overfishing has occurred when the population falls below that number.

These regulations were developed in response to criticisms that the FMPs were not adequately preventing overfishing. The regulations should be given more time to operate to determine if and where they are too inflexible. Moreover, extremely complex FMPs are now in the process of development under these rules. It

would be unwise and premature to change these rules while they are relatively new and not adequately tested, and while FMP development is underway.

o Enforcement During Public Health Emergencies -

Amendments to the MFCMA or other federal law are necessary to provide explicit authority to the federal government to close fisheries when there is a threat to public health or welfare. Currently, fishery closures necessitated by potential health impacts - such as closure of the clam fishery on George's Bank due to increased levels of red tide toxin - were accomplished under the emergency fishery management authority provided under the Act. As currently drafted, the MFCMA is designed to protect fishery resources and is not a public health statute. Language tailored to the unique imperatives of health emergencies must be added to give adequate powers to federal agencies. Also, the current maximum duration of emergency rulemaking of two extensions, each ninety days long, should be lengthened to more realistically reflect the average time a fishery must be off-limits to avoid health dangers, or the time it takes to adopt permanent regulations to resolve other types of fishery emergencies.

o Representation on Fishery Management Councils - A

growing concern among New York's commercial fishermen is the failure to provide representation to

recreational and commercial fishery interests, proportional to their activity in the State, through appointments to Fishery Management Councils. The law is clear that appointments must represent a balancing of these interests, but in practice appointments by the Secretary of Commerce have sometimes favored one set of interests over another. Congress must insist to the new Secretary that balance must be achieved, and if the appointments do not do so, statutory changes may be required.

- o Conflicts of Interest - Council members are required by law to be knowledgeable about fishery matters. In practice, this has required that members of industry be appointed to most of the Council seats. Strict adherence to the requirement that members recuse themselves from votes on issues where they are professionally involved would leave most Councils without a voting quorum. New York strongly supports continuation of the Council system in its present form where members are intimately acquainted with and knowledgeable about the issues.

Although environmental groups may allege that industry members should not be intimately involved in preparation of management plans, the fact is that these individuals understand the consequences of depleting the resources and are willing to make the hard choice



to restore such resources. The economic interests of the states cannot be protected without close involvement by the industry. However, to avoid abuses - which have allegedly occurred in other regions - clear guidelines should be established to clarify the circumstances under which recusal from voting must occur, such as on specific business ventures in which a Council member has financial interest. Votes to give final approval to FMPs that may impact a Council member's interest should not require recusal unless the impact is specific to the operations of the member, or the impact on the member is greater than the impact on the industry as a whole.

- o Internal Waters Processing ("IWP") - The Act now provides that governors may authorize foreign-owned vessels to enter state waters to process fish, no matter where the fish were harvested, solely upon a determination that there is insufficient processing capability in the state for the species in question. Governors are not obligated to deny such permits if the IWP is inconsistent with the specifications of a federal or interstate FMP, or if there is excess domestic process capacity elsewhere in the region. Some IWP operations, prevented from operating in the EEZ by the provisions of a FMP, have found a friendly state who would permit the operation in its internal

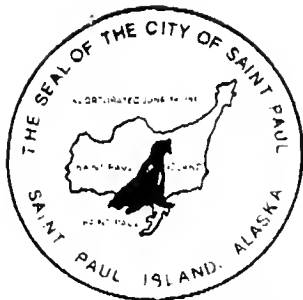
waters. Therefore, some argue that the federal government, rather than the states, should issue these authorizations to ensure that every attempt is made to procure processing services from nearby states before turning to and to assure that the provisions of FMPs are comprehensive with foreign companies.

New York does not have a large domestic fish processing industry, but it is important that our commercial fishermen have a readily available outlet for their products. Therefore, IWP's have, on occasion, been supported by our commercial fishermen as an alternate means of selling under utilized species such as squid, mackerel and herring. We do not support requiring a federal permit for processing by foreign-owned vessels. However, we can agree to requirements that governors not issue such permits (1) without first considering processing capabilities in nearby states, and (2) unless such permits do not conflict with the provisions of applicable interstate or federal FMPs for species in question.

- o Management of East Coast Highly Migratory Species -  
Currently, management of highly migratory species such as tuna, sharks, swordfish and marlin, is the responsibility of NOAA and not the east coast Councils. New York support transferring authority for preparation of FMPs for these species to the Councils, which

historically have moved more expeditiously than NOAA to prepare the FMPs and which are able to better assess and address state issues than NOAA.

Mr. Chairman, thank you again for the opportunity to express our views on this important issue. I would be happy to answer any questions from Members of the Subcommittee at this time.



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RESPONSES BY LARRY MERCULIEFF TO QUESTIONS FROM SUBCOMMITTEE ON  
 FISHERIES MANAGEMENT IN FOLLOW-UP TO HEARINGS ON MAGNUSON FISHERIES  
 CONSERVATION AND MANAGEMENT ACT.

1. Some suggest that the Councils do not act until a fishery has already been overfished. How serious a problem do we have with recognizing a need for an FMP before a crisis develops?

There is a serious problem but the Councils do not have the tools to identify conditions indicating a high likelihood of overfishing before it occurs due to fundamental inadequacies in research and management methodologies. Management of single species out of context of understanding how natural systems, predators, and prey affect such species increases the probabilities that overfishing will result. For example, natural conditions do have adverse effects on a target species at times. When such conditions exist, coupled with intense fishing pressure, a collapse is highly likely. No system exists to monitor these conditions in the context of fishery management. This was the case in the Chilean anchovy fishery. In addition, migratory ranges of target species and/or specific segments of such species are frequently not known. Overfishing occurs in this instance where the target species migrate through multiple national jurisdictions- as is the case with Bering Sea pollock.

Overfishing can also occur even when the fish biomass is huge. For example, concentrated fishing adjacent to wildlife feeding zones during breeding seasons when the wildlife consume the targeted species will result in breeding failures. If this is done consistently over time, such wildlife breeding failures will result in specie declines to the point of making them eligible for a depleted, threatened, or endangered listing under the ESA or MMPA. Fishery management councils frequently do not manage zones in small enough tracts to avoid this situation.

2. An emerging theme seems to be that we need to replace the ad hoc species specific management approach with one that looks at the entire ecosystem. What are your views on this? Should long term planning be vested in some organ other than the Councils?

Please see comments above. Long term planning should be vested in an entity with the ability to bring together research agencies from different disciplines and government institutions to coordinate and synthesize data and information needed for ecosystem monitoring.

3. Some argue that nothing is inherently wrong with the MFCMA, and that the problem is more implementation. Do you agree or disagree,

and why? If you agree, what should Congress do to improve implementation- additional oversight, adding provisions for citizen suit procedures to the MFCMA, or something else?

The MFCMA served the purpose of Americanizing the fishery quite well. Focus now needs to be paid to research and management systems and methodologies in light of relatively new knowledge about the limitations of single species management regimes and improved, highly efficient fishing technologies which did not exist when the Act was passed.

4. What changes in the Magnuson Act, if any, might you suggest to ensure that the consumer is guaranteed a plentiful supply of safe, wholesome sea food?

Changes in research and management regimes as stated in response to question #1 above, use of high tech survey and monitoring technologies developed by the military for enforcement purposes and to monitor environmental conditions, industrial-toxic-hazardous waste discharges, and fish stocks.

5. It has been suggested that if an FMP leads to the displacement of historic participants, then the federal government should provide some adjustment assistance for those displaced persons. How do we define "historic participants" and what kind of assistance might be appropriate?

No comment in definition of historic participants. Displaced persons can be assisted in a variety of ways, limited only by creativity and commitment. For example, the government can: 1) purchase the overcapitalized portion of the fishery, 2) subsidize the development of fish farms in locations where the fish pose no danger to natural genetics and/or cannot expose natural stocks to new diseases, 3) engaging vessels and fishers in support of long term research.

6. Is it reasonable to say that those who profit from the reduction in overcapacity should pay the cost of compensating those driven from the fisheries?

Use of common property should be purchased. Where the funds are allocated should be determined by the appropriations process.

7. How do you perceive the balance of power between the Fishery Management Councils and the Secretary of Commerce\NMFS? Should the Secretary of Commerce exercise greater authority over the Councils?

Authority does not need to be removed from the Councils given proper checks and balances, regulations, guidelines and composition. Congress needs to address the conflict of interest inherent in the authorities and responsibilities given to NMFS. On one hand NMFS is charged with wildlife management responsibilities, and on the other, it supports the fishing industry. The Department of Commerce has an equal conflict in that it has been responsible

for fishery loan and grant programs which cause over-capitalization of the fisheries.

8. Should the selection process for new members of Fishery Management Councils be modified to ensure a more fair and balanced Council membership?

Yes.

9. It has been suggested that the Council Member from the regional NMFS office should be a non-voting member of a Council and that the regional Fish and Wildlife Service representative should be given a vote. What are the merits, if any, of this proposal?

The systemic flaws in fishery research and management should be a priority focus. If these flaws are corrected; e.g., mandating a trans-disciplinary approach to research and management, it will direct the composition of the Council to some degree.

10. The National Marine Fisheries Service has suggested that each state Governor should be required to nominate six rather than "at least three" nominees. How would you feel about this change?

If it increases the checks and balances and accountability to the public interest, then fine. However, such a suggestion may increase parochial interests on the Council. By the same token, unless inherent conflicts within the federal government systems are resolved in the public interest, the same problems exist within the federal government.

11. We have heard a good number of complaints about conflicts of interest among Council members. Please comment on the seriousness of this problem.

Due to management, regulatory, and research system inadequacies the Council process is open to protecting individual self-interest.

12. Joe Blum has testified about the Council exemption from the Federal Advisory Committee Act and conflict of interest laws. Should these exemptions be continued and why?

No comment

13. Is NMFS pursuing research to find more accurate, reliable, and cost effective ways to estimate fish population levels?

All federal agencies approach research with conventional wisdom which is not adequate. New approaches and efforts are needed.

14. Do Councils generally have adequate data to ensure that Fishery Management Plans have a scientifically sound basis? Do Councils take full advantage of this information?

Any scientist worth their salt will say that there is never enough

data to make definitive determinations. The real question is, as a policy, what should Councils do given inadequate understanding of fishery dynamics in context of ecosystem processes?

15. How might commercial and sportfish harvesters contribute to the collection of scientific data on fish stocks?

Scientists and harvesters should convene forums to explore this question and develop cooperative measures.

16. During the election, we heard a great deal about a new commitment to protecting natural resources. Does the President's budget provide sufficient funding for NMFS to perform its mission?

NMFS' mission should be re-examined in light of conflicts of interest, new technologies, and advances in understanding of the inter-connectedness of components in an ecosystem. Funding of the current mission without consideration of these elements will maintain status quo.

17. Please assess the willingness of fishery resource users in your region to bear a larger share of the costs of federal fishery management efforts. What alternatives are perceived as the least burdensome by resource users?

Some groups are willing, given credible practices which has the confidence of the users and fairness of any cost allocation scheme.

18. If additional revenues for fisheries conservation and management are necessary and Congress decides that users and others should bear some of the cost, how should those costs be allocated among interested parties?

No comment

19. Do Councils need more authority to protect habitat on behalf of fishery resources? How might this be accomplished?

Yes. A multi-agency policy/regulatory group should act as a standing entity to coordinate and develop cooperative efforts between agencies on an on-going basis.

20. Your comments that the lack of scientific evidence is often used as a tool to block Council action are interesting. I note that yesterday's New York Times reported that the whole optimal yield test in Magnuson may be flawed. Would anyone comment on that?

The optimal yield test is based on use of computer models constructed from time-series data and assumes static conditions in the environment. The time-series data, even if for ten or twenty years, is very inadequate if environmental parameters are not monitored. Everyone understands that the only constant in nature is change. This becomes important for fishery management when

environmental conditions are adverse to the reproductivity or survivability of the targeted stock. When such conditions are coupled with even moderate fishing pressure, the targeted stock can crash (as was the case in the Chilean anchovy fishery).

Optimal yield tests can also fail when the model construct used for calculating optimum yield are faulty, as may be the case with Bering Sea pollock. U.S. managers, supposedly utilizing conservative quota regimes, have managed only the U.S. side of the fishery without knowledge of the connectedness of "Donut Hole" and Cape Navarin pollock stocks to the U.S. fishery. Such a situation makes optimal yield tests useless.





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June 27, 1993

The Honorable Gerry Studds  
Merchant Marine and Fisheries Committee  
Ford Building  
Room 544  
Washington, D.C. 20515

Dear Congressman Studds:

We offer the following comments on reauthorization of the Magnuson Fishery Conservation and Management Act and the Atlantic Tuna Convention Act. We focus on those issues that we think are the greatest hindrances to more effective Council fisheries management. Thank you for the opportunity to have input into this important process.

First and foremost, we feel that the MFCMA must be significantly improved by streamlining the process, eliminating redundancy, and decentralizing much of the decision making authority. Those charged with the difficult job of writing and justifying plans and regulations continue to be burdened with a complicated management process and many other applicable laws such as the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, and Executive Order 12291 - all with requirements that often are duplicative and with different timetables. If the process is to be improved, and if those involved with the process (i.e., Council members) are not to become disheartened and frustrated by the laborious process which oftentimes seems to bear little if any fruit, fewer regulatory requirements and documents, and timely NMFS input and reviews with less Washington involvement are required.

Regarding a greater role of the NMFS regional office in the review and approval of plans and amendments, we feel that this decentralization of decision making is critical. A greater role is appropriate for management of species which are not highly migratory and are found within the range of Regional Office authority; e.g., groundfish and lobster. National review is not needed. Indeed, it is an impediment to timely and sensible management. The recent NMFS embarrassment resulting from a Washington decision to

extend the time of the spawning closure for haddock is an excellent example of the consequences of the Regional Office having a relatively minor role in the final decision. We suspect the closure never would have happened if the Regional Office had to make the decision.

The enervating environment in which NMFS and the Council must work has been a major cause of a lackluster fisheries management performance and a fishing industry that finds it increasingly difficult to believe in and support the process. Professional fisheries managers, never mind fishermen, processors and others, find it hard enough to maintain an adequate level of interest and involvement needed to shepherd even the simplest of plan amendments from their inception to completion.

Moreover, since emergency rules are commonly employed by the Councils to deal with unexpected events or to deal with oversights missed by both the Councils and reviewers, the emergency rule process needs improvement. We agree with NMFS's proposal to permit extension of an emergency rule in two additional 90-day increments with the emergency rule period not to exceed one year.

With regard to the reauthorization of the Atlantic Tuna Convention Act, we offer the following comments. Our focus is primarily on fisheries not subject to the jurisdiction of the United States -- fisheries that may be undermining management efforts within ICCAT and our domestic fisheries.

Perhaps the most serious problem is the catch of bluefin tuna by vessels fishing from countries not belonging to ICCAT. Non-party catches are made by countries that choose not to join ICCAT and by vessels of member countries that have re-flagged to avoid ICCAT restrictions. We have great concern that non-party catches have increased to very high levels in response to the increasing export value of bluefin tuna.

Another significant problem is the catch of undersized bluefin in the eastern Atlantic and Mediterranean Sea. ICCAT member nations are allowed a 15% annual allowance of catches to be under the minimum size of 6.4 kg. There is growing evidence that this allowance is being greatly exceeded, due to the targeting on year classes of immature bluefin tuna.

We suggest that the problem of non-party catches and non-compliance of ICCAT regulations be reviewed as part of the process of reauthorization of the Act. The means to do this may be through the review of Section 971 d. (Administration). The Section addresses the prohibition of the entry of ICCAT convention species into the U.S. from countries acting in a way to diminish the effectiveness of conservation recommendations of ICCAT. We recommend that this Section be reevaluated and strengthened to discourage illegitimate fishing practices for Atlantic bluefin tuna.

Concerning a separate issue, we would like to see improved reporting of bluefin tuna catch data and information on the status of the stock. Biennial reports from the Secretary of Commerce to Congress on the bluefin tuna fishery are required in Section 971 i. of the

Act. This information has not been available in a timely manner and in sufficient detail for this agency and other interested parties to review. We recommend that Section 971 i. be modified to provide a clear directive and resources to the Secretary of Commerce for the production of annual reports on the commercial and recreational catches and biennial reports on the status of the stock.

Considering the concern about the need for strengthened protection for fisheries habitat, promoting fair and balanced Council representation, avoiding Council conflict of interest, improved data collection, and more effective management of highly migratory species, you and your Committee have quite a challenging task. I conclude by asking you to stress means by which the process can be simplified, two examples being to free the Councils of regulatory hurdles and lengthy timetables which instead of promoting improved review and critique of plans and amendments, lead to fisheries management which is far from being dynamic and responsive to the needs of the resource and their fisheries.

Sincerely,

A handwritten signature in dark ink, appearing to read "Philip G. Coates", written in a cursive style.

Philip G. Coates  
Director



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Scott A. Weiner  
 Commissioner

July 9, 1993

The Honorable Thomas J. Manton, Chairman  
 Subcommittee on Fisheries Management  
 House Merchant Marine and Fisheries Committee  
 1334 Longworth House Office Building  
 Washington, DC 20515

Dear Chairman Manton:

I am writing to provide testimony of the State of New Jersey for the reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA). Thank you for the invitation to appear before your subcommittee. I apologize for not appearing in person as originally planned but commitments with the Governor required me to remain in New Jersey.

The New Jersey Department of Environmental Protection (DEPE) is charged with management of New Jersey fish and wildlife resources, including the marine fisheries resource. The DEPE also represents the State of New Jersey as a voting member on the regional fishery management council created under the Magnuson Act.

Our marine fishery is indeed a resource which must be protected and wisely managed. In New Jersey alone, the harvesting of this resource by recreational and commercial fisheries collectively contributes between \$1.5-2 billion dollars annually to the economy of the State. The reauthorization of the MFCMA is essential to assist the DEPE, working closely with other federal, state and interstate fishery management agencies, to provide the sound management required for this invaluable resource.

Before discussing the specific areas and provisions of the reauthorization, I would first like to discuss a situation which New Jersey and other coastal states are facing - Summer Flounder Management - which I feel will not only highlight the need for management of the marine fisheries resource but will also illustrate the complexity of the situation.

Last December, the National Marine Fisheries Service (NMFS) began implementation of the Summer Flounder Management Plan. It had been jointly developed and adopted by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council. The Plan is designed to reduce the exploitation of summer flounder by 47 percent to allow the stocks to recover. As part of this Plan, a 14-inch size limit, six fish catch limit and a restricted season were established for recreational fishery. To achieve an equitable reduction in the commercial fishery sector, a 5 1/2 inch mesh restriction for otter trawls and a coastwide (Massachusetts through North Carolina) quota were established. The quota was deemed to be a necessary and integral part of the Plan. The quota allocated to each state was determined based on the amount of each respective state's catch for a ten-year period, 1980-89. As such, New Jersey's allocation (17 percent) would represent approximately 2.1 million pounds of summer flounder for the 1993 commercial fishery season.

Once the quota allocation had been determined, however, it now became important to evaluate the best - and most equitable - methods to meet this allocation. The strategy which was developed included the implementation of three seasons, each with a percentage of the annual allocation based upon historical landings. The seasons established and their respective allocations are as follows:

January-April:	822,127 pounds (39.28%)
May-August:	352,251 pounds (16.83%)
September-October:	918,614 pounds (43.89%)

The major reason for establishing seasonal allocations was the recognition that different size vessels traditionally fished in different seasons and the intent was to ensure that all vessels had fair access to the resource. During the winter season, summer flounder occur only offshore. Because of the long transit distance and severe weather conditions at this time, only large-size vessels are able to harvest fish. As the season progresses toward spring, the fish rapidly migrate inshore to occupy shallow water near shore. New Jersey law prohibits use of otter trawls within 2-miles of shore. Because of this, the availability of summer flounder to the commercial fleet is greatly reduced. This is especially true for large-size vessels which find that reduced catches are unprofitable for their operations.

In addition to the seasons, any vessel landing more than 100 pounds of summer flounder in New Jersey after March 5, 1993 is required to possess a New Jersey Summer Flounder Permit. To be eligible for this permit, the vessel must have landed at least 1,000 pounds of summer flounder in each of two years during the period of 1985-92.

It is during the spring-summer period that the DEPE has special concern regarding the catch and the management of this resource. Recently, the small-vessel fishermen have expressed concerns that the second season quota will be harvested rapidly and the season will close before the smaller vessels have had the opportunity to harvest any summer flounder. In fact, by May 15, only two weeks after the summer season had opened, a full 23% (92,000 pounds) of the season's quota had already been caught.

This concern has prompted a proposal for trip or landing limits of a certain poundage be placed on all vessels as a mechanism to ensure that the small-vessels are at least able to participate in their traditional summer fishery. However, the Summer Flounder Advisory Committee, established to oversee New Jersey's program, cited that there were a lack of existing mechanisms to monitor or enforce such proposals and thus made no move to adopt the measure.

The DEPE is committed to ensuring that all vessels historically engaged in New Jersey's summer flounder fishery have the opportunity to participate in the fishery under the existing regulations. In order to bring this about, the DEPE will continue to work to implement the recommendations made by the advisory committee of New Jersey's commercial fishermen. Our experience does not seem to indicate that the rules are not being followed. However, the DEPE will continue to monitor weekly reports sent to us by the NMFS. In addition, we will contact our major flounder dealers as frequently as necessary to monitor the landings during the summer season. If it is determined that the summer quota is being harvested quickly and the small vessels have not had the opportunity to participate in the fishery, the DEPE will take the necessary steps to close the season.

As I hope this example illustrates, there are many factors to be considered in the protection and management of the marine fisheries resource. Many of these issues are addressed in the reauthorization of the Magnuson Act. Specifically, I believe that there are seven issues to which attention needs to be drawn. They are:

1. Habitat protection;
2. Funding;
3. Management of highly migratory species;
4. Emergency rule authority;
5. Enhanced data collection;
6. Interjurisdictional fisheries management;
7. Council representation

#### 1. Habitat protection

The DEPE strongly supports strengthening protection of fisheries habitat. Most coastal fisheries resources are dependent upon nearshore and estuarine areas. These areas continue to be subject to various pressures that may result in habitat degradation or destruction. The Council(s) should be required to identify and designate critical habitats in each management plan for the particular species. Once so designated, the federal permitting agency responsible for the issuance of permits for various projects which may impact that habitat should be mandated to consult with the National Marine Fisheries Service (NMFS) and the appropriate Council(s) prior to the issuance of the permit. NMFS and the Council(s) should be allowed to have meaningful input into the permit process.

## 2. Funding

Funding for MFCMA needs to be increased to fully implement and monitor fisheries management plans if they are to be effective. Fees currently collected are limited to costs of issuing permits and are deposited in the General Treasury. The Act should provide the authority to recover costs necessary for the implementation and monitoring of management plans with these funds being deposited in a special account dedicated for this purpose. Specifically, any permit fees collected from a particular fishery should be dedicated to enhancement of that fishery.

The use of these funds should also be made available to the states to compensate for data collection and monitoring associated with plan implementation. Monitoring efforts by the states to ensure compliance with fisheries management plans, as well as enforcement of management measures requires funding beyond what can be appropriated in state budgets. In addition, states should have easier access to funds generated from fines and penalties collected under the Act.

## 3. Management of highly migratory species

As the summer flounder example illustrates, there is great need to provide a strong, non-political forum for diverse public involvement to properly manage our migratory marine resources. The DEPE supports returning the authority of management of the highly migratory sharks and billfishes along with that of the tunas (all of which are currently under the sole authority of the Secretary of Commerce) to the regional Councils. This action would permit consistent management efforts for all species under this Act in a fair and open forum.

## 4. Emergency rule authority

Currently, the Secretary may implement an emergency rule for 90 days with an extension of up to 90 days. In some cases, this period of time is insufficient to implement a fishery management plan or amendment. As a result, the resource or fishing community may be negatively impacted. We would recommend that the Secretary should be given the authority to extend an emergency rule for up to a year. Furthermore, we would recommend that State delegated officials be accorded some latitude and flexibility to create alternate plans so long as the end result (i.e., meeting overall objectives) is not imperiled.

## 5. Enhanced data collection

The DEPE supports an enhanced data collection program. The resources and fisheries (both recreational and commercial) dependent upon them deserve the best information available. More emphasis needs to be directed to at sea observations, especially to collect information regarding by-catch of non-targeted species.

In addition, more accurate information regarding the amount of harvest and location of harvest is necessary. The more information that is available, the more effective, the more effective will be the management measures. In cases such as summer flounder that have called for a significant reduction in mortality, it is essential to have the data necessary to justify the management decisions as they have profound economic impacts to the various user groups.

#### 6. Interjurisdictional fisheries management

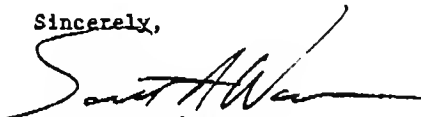
Although not part of the Magnuson Act, the DEPE wishes to indicate support for the concept of interjurisdictional fisheries management as the mechanism to ensure compliance with coastal management plans for various species. Legislation similar in function to the Atlantic Striped Bass Conservation Plan would solve the existing concerns with the coastwide management of species such as summer flounder, weakfish and bluefish, just to name a few. If, for example, such an act were in place, those states currently out of compliance with the summer flounder plan would face a compelling reason to come into compliance.

#### 7. Council representation

The recommendation for each state to submit six nominees for each vacancy is excessive. The submission of three nominees for each vacancy should be sufficient. In addition, it should be left to the states to ensure that the nominees who are submitted are qualified and represent a balance of the commercial and recreational interests. Lastly, in the past Council members have been removed at the end of their term even though the states have recommended they be reappointed. If this occur, it should be required that the state be advised of the reasons for this decision.

I thank you for this opportunity to comment on this important initiative. Please feel free to contact me if you have any questions or require further information.

Sincerely,



Scott A. Weiner  
Commissioner





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June 10, 1993

Hon. Thomas J. Manton  
Subcommittee on Fisheries Management  
U.S. House of Representatives  
1334 Longworth HOB  
Washington, DC 20515-6230

Dear Chairman Manton,

Thank you for the opportunity to provide further information regarding the reauthorization of the Magnuson Fishery Conservation and Management Act.

My answers to your questions are:

1. How serious a problem do we have with recognizing a need for an FMP before a crisis develops?

Slowness in responding to overfishing has been a problem in some fisheries when harvesting first begins. At this time, however, there are relatively few newly developing fisheries and most stocks have a history of exploitation and an existing FMP.

Given the scientific uncertainties in assessing newly exploited stocks, it is difficult to convince users and managers to limit harvests. Assessing stocks which have not been harvested over a long period of time is difficult. When a fishery first develops, managers must monitor harvests and in some instances cannot verify their stock models and estimates of annual productive capacity unless harvests occur in excess of sustainable levels.

Slowness in responding to scientific information suggesting overfishing also has occurred in some more mature fisheries. Federal paperwork and review requirements often bog down FMP amendments, particularly when amendments are developed. Public concerns about the economic impact of severe harvest cutbacks have also caused some councils to hesitate in recommending restraints.

2. What are your views on replacing the ad hoc species specific management approach with one that looks at the entire ecosystem?

Ecosystem management is being advocated primarily out of a growing concern for bycatch and predator-prey restraints. The fishery management councils are beginning to incorporate ecosystem considerations into their plans as information becomes available. Several plans, for example, have been expanded in scope from a single species to a complex of several species.

As a general rule, it would be a mistake to direct fishery managers into ecosystem approaches through legislation because scientific information is often lacking. The exception concerns marine mammals.

The competition between humans and marine mammals is becoming a serious potential problem. Feeding mammals protected by the Endangered Species Act will likely constrain human harvests in the next few years. Also, some mammal populations are expanding and their the consumption of fish is threatening several human fisheries in Maine and the Pacific coast. There are no clear statutory answers to the questions of how many mammals are enough, and whether mammals or human should have preference to fish.

3. The basic structure of the Magnuson Act is sound and new citizen suit provisions are not needed. Additional congressional oversight, however, would be helpful.

"Better" implementation, rather than "more" implementation is needed---particularly in improving the cost-effectiveness and cost-benefit ratios of the present program.

4. Several steps might be taken to help consumers.

First, Congress should clarify the Secretary's emergency powers to close or otherwise restrict an EEZ fishery when the FDA finds that the fishery presents an immediate threat to public health. Also, some type of cooperative scheme with the states is needed to close unsafe fisheries in state waters modeled upon the present shellfish program.

Second, persons with a consumer perspective could be appointed to the councils.

Third, the Secretary could publish additional guidance to the councils concerning "overall national benefit."

5. Rebuilding depressed fisheries is very difficult. It might be made easier if there were incentives and/or assistance available as well as regulations. (The only assistance program I am aware of was a vessel buy-back program authorized several years ago in response to court cases allocating Pacific salmon to treaty indian tribes. Many questioned this program's cost effectiveness.)

Some believe that ITQs or IFQs, in effect, provide assistance because the quota can be sold or rented by fishermen not wanting to fish. In this way those that remain in the fishery "compensate" those who leave. Proponents also argue that quotas give holders a "stake" in harvest restrictions because holders benefit when the stock is rebuilt. Quotas, however, remain controversial with many fishermen.

The identification of the "historic participants" in a fishery is an extremely difficult task which has been accomplished by some councils on a fishery-by-fishery basis for purposes of developing limited entry programs. (Limited entry programs tend to prompt litigation on this question.) The concept of "historical participants" also has been used to allocate TALFF and to negotiate fish allocations within international fishery commissions.

There is no generally accepted definition of "historical participants" in fishery management. There often are debates over what is meant by "historical" (i.e., timeframe). Also, controversial are issues concerning who is to be a "participant" (i.e., vessel or crew) and how "participation" is measured. Incomplete historical data often is a major problem.

The Trade Remedy Assistance Office at the ITC has information on the various adjustment assistance programs available to injured industries under U.S. trade law. These programs may provide you with some guidance on what has worked in other areas. USDA also has many commodity programs aimed at providing assistance to food producers.

6. Requiring that compensation be provided by fishermen is unreasonable. In most other industries those firms which remain in business "benefit" when a competitor leaves, yet the government does not ask them to provide compensation. (Examples include restaurants, gas stations, airlines).

7. The Magnuson Act provides for a flexible or dynamic balance of power between the councils and the Secretary. As a result, the balance has changed as Administration policy has changed. The Secretary was dominate in the 1970s, then the councils became dominate in the 1980s when the Administration changed.

More recently, the Secretary seems to be reasserting a dominate position. (Examples include the Secretary's recent overturning of council decisions regarding the onshore-offshore allocations of Alaska groundfish and Pacific whiting, the Conservation Law Foundation lawsuit settlement regarding New England Groundfish, and the recent allocation of Pacific salmon to non-treaty Indians.) Each Administration seems to adopt a different policy about leadership in fishery management.

This balance should be maintained. Interested members of the public and state officials have no incentive to participate in the decisions of the councils if council decisions are ignored by the Secretary. Their participation and compromise is needed, however, if plans are to be effective. At the same time, the Secretary must retain authority to act quickly to conserve resources if the council process bogs down, or to overturn council decisions which are outside statutory boundaries.

It is too early to say what the Administration's policy will be. Thus, it is too early to say whether legislative changes are

needed in this area.

8. Achieving a fair and balanced membership on the councils through legislation is difficult. Ultimately the appointment process depends upon the political judgments of the state governors and the Secretary.

Council membership make-up should vary over time as fisheries and issues change and should not be fixed through legislative allocations to various interests.

9. Fish and Wildlife Service representatives should not be given a vote on the councils. FWS plays a small role in the study and conservation of the fishery resources in the oceans, particularly those located beyond state boundaries.

The dual role of NMFS directors on the council (both voting member and initial judge of plans) has been questioned in the past, but most people feel that it encourages greater interaction between councils and the NMFS earlier in the process and should be retained.

10. Requiring six nominees from the governors for council memberships would add expense with little benefit.

Requiring three nominees provides the Secretary with an adequate choice. If a governor wants to limit the Secretary's choice by "stacking the deck" he can do so with six nominees as well as with three. If the Secretary is dissatisfied with the qualifications of nominees, he can reject individuals and ask for additional names.

11. A thorough investigation of all council members would be needed to confirm the seriousness of the charge that members have a conflict of interest. The media perception of a conflict, however, is serious, particularly in the Pacific northwest. Congress should respond to this perception to insure that the credibility of the council system is maintained.

12. The Councils should have a systematic way of identifying and avoiding potential conflicts of interest before votes are taken. This system could be modeled after successful state programs adopted for fishery boards and commissions.

13. NMFS is researching ways to improve stock level estimates. (And is now comparing the different methods used in different NMFS regions.) Methodology development is advanced---but the statistical data system remains very poor, particularly in the Gulf of Mexico and Atlantic.

14. As a general rule, the councils have adequate information and take advantage of the information presented to them. In some instances, some councils have not properly evaluated their regulatory options giving the impression that they have prejudged issues before looking at the data.

15. There are numerous ways for commercial fishermen to contribute to scientific efforts, including:

- o logbooks
- o landing reports
- o questionnaires
- o tagging
- o collecting samples
- o hosting vessel observers and researchers
- o verifying remote sensing data

16. No. Funding is needed for the management of Atlantic highly migratory species, and the regulation of the bycatch of marine mammals. The NMFS budget should be examined closely to insure funds are being spent on high-priority efforts.

17. There is little support for user fees or additional taxes. Seafood demand is flat (per capita consumption continues to decline) and ex vessel prices are low. States and local governments have been raising taxes and the President's proposed energy tax on diesel fuel would impose major new burdens on fishermen (farmers, but not fishermen, were exempted by the House).

The alternative which is least burdensome to resource users is to continue to fund management programs through general taxpayer revenues.

18. Any costs collected from the industry for fishery management should be linked as closely as possible to the benefits received.

This linkage is strongest when quotas are allocated to individuals or groups in a way that confers an asset which has a value recognized by the marketplace. In this situation the regulatory process has created an asset which is "given" to an individual (typically based upon an individual's historical participation in the fishery, but sometimes quotas have been given to a group based upon its geography and racial make-up as was done in Alaska's Community Development Quota program.)

19. Yes. A three-step consultation process could be established under the Magnuson Act to begin to address habitat concerns.

First, the councils in their FMPs should identify the habitat they believe is "critical" for maintaining the optimum yield of a fishery, and the types of federal actions which may significantly and adversely impact this habitat. After FMPs incorporate these provisions, the Secretary should be authorized, in his discretion, to comment to federal agencies on specific proposed actions which significantly impact this habitat. Finally, federal agencies should be required to consult with the Secretary concerning the Secretary's comments prior to taking final action which might have a significant adverse impact on "critical habitat."

20. The characteristics of highly migratory fisheries are very different than those of other fisheries managed under the Magnuson Act. These characteristics, which were recognized by Congress in its last amendments to the Act, require that a different management system be used to regulate harvests.

The management measures needed for highly migratory fisheries must be enforced on foreign as well as U.S. vessels to be effective in conserving stocks. Because harvests occur beyond U.S. jurisdiction, obtaining the harvest restrictions and other measures needed to conserve highly migratory fisheries requires international agreement. This is especially true in the Atlantic where less than 5 percent of total harvests occur within U.S. waters. Thus, management measures must be obtained through international negotiation rather than through U.S. rulemaking if they are to be effective.

Because international agreement is essential, those U.S. regulations which apply to U.S. vessels should be designed to foster foreign compliance with international agreements, to encourage future international agreements consistent with U.S. policy, and to implement U.S. commitments to international decisions once they are negotiated.

There are three reasons why the planning and regulatory tasks needed are best carried out at the national level, rather than by a group of regional councils, or a single regional council.

First, experience has shown that FMP planning for these fisheries is best accomplished by a single entity, rather than through a group effort of several councils. A single entity is simply a more efficient and effective mechanism.

Second, the fishermen concerned live in several different council regions. Each existing council, however, has its own regional constituencies and perspectives. Thus, assigning an existing council a policy-making role would be perceived as favoring one region over another.

Third, policy development requires an ongoing dialogue between U.S. and foreign officials. This is best done at the national, rather than the regional, level of government.

Developing FMPs for highly migratory fisheries is a useful exercise for identifying U.S. interests and priorities and for evaluating various management options. In this way an FMP can set a policy "framework" for the international negotiations needed for the management of these fisheries.

These FMPs should be developed by the same group of advisors who support the U.S. ICCAT Commissioners. This promotes the coordination needed between domestic and international efforts and avoids duplication.

FMPs, however, should not tie the hands of U.S. negotiators. These negotiators must have discretion to obtain the best possible agreement from foreign nations within the general policy framework recommended by the FMP. They should not be restrained in their negotiations by unilateral U.S. management measures which would restrict U.S. harvests irrespective of foreign agreement. If foreign negotiators know U.S. harvests will be restricted irrespective of international agreement, there will be little incentive on their part to agree to restraints.

21. The Secretary does not need more authority to encourage states to comply with FMPs prepared under the Magnuson Act.

There is, however, a question of whether there should be a clearer dividing line between the federal and state scientific and enforcement programs. The respective roles of the federal and state governments in conducting fishery research and gathering fishery statistics, for example, vary widely from region to region and are exceedingly complex. I suspect there are numerous inefficiencies and redundancies despite the best efforts of the interstate commissions and others to coordinate efforts.

Revenue sharing is another area which might be investigated. Many states tax fish production or otherwise raise revenues from the production of fisheries under federal management. At the same time federal funds are passed on to the states through various grants and contracts. While states perform many vital services for federal management programs, it is not clear that the present federal-state relationship provides a good benefit-cost result for federal managers.

Taking authority away from the states can be counterproductive to sound fish and wildlife management. A classic example is the Marine Mammal Protection Act which destroyed any incentive on the part of the states to fund marine mammal research and conservation.

States have sometimes had difficulty cooperating with each other in the management of stocks harvested primarily in state waters. The Striped Bass Act, with its threat of a federal harvest moratorium, is widely credited with improving compliance with the commission's plan. Whether there is support for extending this concept to other fisheries in the commercial industry is unclear.

Thanks again for the opportunity to comment.

Sincerely yours,



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